

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Transcript of Record.  
(*In Three Volumes.*)

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THE PACIFIC COAL AND TRANSPORTA-  
TION COMPANY, a Corporation, and M. D.  
McCUMBER,

Appellants,

vs.

PIONEER MINING COMPANY, a Corporation,

Appellee.

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VOLUME I.

(Pages 1 to 336, Inclusive.)

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Upon Appeal from the United States District Court for  
the District of Alaska, Second Division.

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FILED

SEP 18 1912



Records of U. S. Circuit Court  
appeals  
757





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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Attorneys of Record.**

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Attorneys for Plaintiff.

WILLIAM A. GILMORE, Nome, Alaska,

GEO. B. GRIGSBY, Nome, Alaska,

ELWOOD BRUNER, Nome, Alaska,

ALBERT H. ELLIOT, 34 Ellis St., San Francisco, Cal.,

Attorneys for Defendants.

---

*In the District Court for the District of Alaska,  
Second Division.*

No. —.

THE PIONEER MINING COMPANY, a Corporation,

Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTATION COMPANY, a Corporation, M. D. McCUMBER, JOHN DOE, and RICHARD ROE,

Defendants.

**Complaint.**

The plaintiff above named complains and alleges:

**I.**

That the plaintiff is now, and during all of the times hereinafter mentioned it was, a corporation duly organized, created and existing under the laws of the State of Washington, doing business in the District of Alaska.

## II.

That the defendant Pacific Coal and Transportation Company is now, and during all of the times hereinafter mentioned it was, a corporation duly organized, created and existing under the laws of the State of Maine, doing business in the District of Alaska.

## III.

That the names of the defendants John Doe and Richard Roe are fictitious, and that their real names are unknown to the plaintiff. [1\*]

## IV.

That the plaintiff is now, and for a long time hitherto, it has been the owner of and in the possession of that certain placer mining claim lying and being in the Cape Nome Recording District, District of Alaska, known as Bench Claim No. one (1) Moonlight Creek, near Moonlight Springs, and described by metes and bounds as follows:

Commencing at Stake No. 1, the northwest corner from which U. S. Monument No. 2 bears north  $4^{\circ} 27'$  east 670.2 feet; thence south  $65^{\circ} 02'$  east 730 feet to stake No. 2, the northeast corner; thence south  $40^{\circ} 27'$  west 987.5 feet to stake No. 3, the southeast corner; thence north  $59^{\circ} 43'$  west 741.6 feet to stake No. 4, the southwest corner; thence north  $42^{\circ} 06'$  east 923.4 feet to stake No. 1 or place of beginning, containing 15.668 acres (all bearings refer to the true meridian; magnetic variation  $19^{\circ} 32'$  east—survey No. 608).

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\*Page-number appearing at foot of page of original certified Record.



Amendment allowed to complaint this 14th day of November, 1911, and directed to be attached to the margin of the complaint.

J. SUNDBACK,

Clerk.

By J. Allison Bruiner,

Deputy.

Boundary description of Bench No. 1 on Moonlight Creek:

Commencing at stake No. 1 or the SW. corner, which is identical with the SW. corner of Robert Lyng's Moonlight claim and the NE. corner of placer claim No. 2 on Moonlight Creek;

Thence S  $60^{\circ} 12'$  E—741.5 ft. to stake No. 2 or the SE. corner, which is identical with the SW. corner of the Carlson location;

Thence N.  $40^{\circ} 01'$  E.—986.8 ft. to stake No. 3 or the NE. corner, which is identical with the NW. corner of the Carlson location;

Thence N.  $60^{\circ} 12'$  W.—600.— ft. to stake No. 4 or the NW. corner;

Thence S.  $47^{\circ} 51'$  W.—1021.3 ft. to stake No. 1 or place of beginning;

All bearings refer to the true meridian, magnetic variation— $19^{\circ} 30'$  E.

#### V.

That the said defendants and each of them claim an estate or interest in said premises adverse to the plaintiff, the extent and nature of which adverse claims are to the plaintiff unknown.

#### VI.

That the claims of said defendants are, and each

of them is, without any right whatsoever, and that none of the defendants have any right, title, estate or interest in said premises or any part or portion thereof.

VII.

That said premises are of great value, to wit, of the value of \$10,000.00 and upwards; and that the plaintiff [2] and its predecessors in interest, ever since the 3d day of January, 1899, have been the owners, and plaintiff is now the owner of the afore-said premises, and every part thereof, together with the improvements thereon.

WHEREFORE, the plaintiff prays judgment that the defendants, and each of them, have no estate or interest whatsoever in or to said premises or any part thereof; and that the title of the plaintiff is good and valid, and that the defendants, and each of them, be forever enjoined and restrained from asserting any claim whatsoever in and to said placer mining claim adverse to the plaintiff; and for such other and further relief as to the Court shall seem meet and proper; and for the costs and disbursements of the plaintiff herein.

O. D. COCHRAN,

G. J. LOMEN,

Attys. for Plff.

United States of America,  
District of Alaska,—ss.

L. Stevenson, being first duly sworn, deposes and says: That he is the manager and agent of the Pioneer Mining Company, a corporation, plaintiff above named; that he has read the foregoing complaint, knows the contents thereof, and that the

same is true as he verily believes.

L. STEVENSON.

Subscribed and sworn to before me this 7th day of November, 1910.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska. [3]

[Endorsed]: #2245. In the United States District Court for the District of Alaska, Second Division. The Pioneer Mining Company, a Corporation, Plaintiff, vs. The Pacific Coal and Transportation Company, a Corporation, et als., Defendants. Complaint. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 7, 1910. John Sundback, Clerk. By \_\_\_\_\_, Deputy. L. O. D. Cochran & G. J. Lomen, Attorneys for Plaintiff. [4]

---

*In the District Court for the District of Alaska, Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTATION COMPANY, a Corporation, M. D. McCUMBER, JOHN DOE and RICHARD ROE,

Defendants.

**Demurrer.**

Comes now the defendant, M. D. McCumber, and demurs to plaintiff's complaint in the above-entitled action on the following grounds, to wit: That the said complaint does not state facts sufficient to



constitute a cause of action, or any cause of action.

Wherefore, defendant demands that said action be dismissed and for his costs.

WILLIAM A. GILMORE,  
GEO. B. GRIGSBY,

Attorneys for Defendant, M. D. McCumber.

Due service of the above and foregoing demurrer acknowledged by receipt of copy, this 4th day of January, 1911.

O. D. COCHRAN,

Of Attorneys for Plaintiff.

[Endorsed]: Original. No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. The Pacific Coal and Transportation Company, M. D. McCumber, John Doe and Richard Roe, Defendants. Demurrer. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 4, 1911. John Sundback, Clerk. By ———, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. L. [5]

---

[Minutes—March 4, 1911.]

*In the District Court for the District of Alaska, Second Division.*

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Saturday, March 4, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:



2245.

PIONEER MINING CO.

vs.

THE PACIFIC COAL & TRANSPORTATION  
CO. et al.

**[Recital Re Overruling Demurrer to Complaint, etc.]**

The demurrer of the defendant M. D. McCumber was submitted to the Court and overruled. On motion the defendant McCumber was granted two weeks from this date in which to answer the complaint. [6]

---

**[Minutes—May 20, 1911.]**

*In the District Court for the District of Alaska, Second Division.*

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Saturday, May 20, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

McCUMBER et al.

Mr. William A. Gilmore, attorney for defendant McCumber, and the attorneys for defendant Pacific Coal & Transportation Company presented to the Court a motion to have this cause placed on the jury calendar for trial, and after argument of counsel said motion was submitted to the Court and taken under advisement. [7]

---

*In the District Court for the District of Alaska, Second Division.*

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTA-  
TION CO., a Corporation, and M. D. Mc-  
CUMBER et al.,  
Defendants.

**Opinion.**

O. D. COCHRAN and G. J. LOMEN, Attorneys  
for Plaintiff.

J. ALLISON BRUNER, Attorney for Defend-  
ant The Pacific Coal and Transportation  
Co.

WILLIAM A. GILMORE, GEO. B. GRIGSBY,  
ELWOOD BRUNER, Attorneys for De-  
fendant M. D. McCumber.

Plaintiff brings this action and alleges in para-

graph IV of its complaint that plaintiff is now and for a long time hitherto has been the owner of and in the possession of that certain placer mining claim lying and being in the Cape Nome Recording District, District of Alaska, and known as Bench No. 1 Moonlight Creek, near Moonlight Springs, and describes it by metes and bounds and courses and distances according to Survey No. 608.

Plaintiff further alleges in paragraph V that defendants, and each of them, claim and assert an interest in said premises adverse to plaintiff, the extent and nature of which adverse claims are to plaintiff unknown.

Plaintiff further alleges in paragraph VI of its complaint that the claims of said defendants, and each of them, are without any right whatever.

Plaintiff in paragraph VII of its complaint further alleges the value of the property to be ten thousand dollars and prays [8] that the defendants be forever restrained and enjoined from asserting any claim whatever in and to said premises adverse to plaintiff, etc.

To this complaint the defendant the Pacific Coal and Transportation Company and the defendant M. D. McCumber have answered separately. The answers of each of said defendants are identical, except that the defendant McCumber is alleged to be a lessee under a lease from the defendant the Pacific Coal and Transportation Company. Both answers deny all of the material allegations of the complaint and specifically deny the possession of plaintiff.



In the first affirmative answer of the defendant The Pacific Coal and Transportation Company, the said defendant alleges that it is the owner of the Moonlight or Grant claim under and by virtue of a valid location, describing the same by metes and bounds and courses and distances, and alleges that it and its grantors and predecessors in interest are the owners in fee of the whole of said claim, having entered in the exclusive, open and notorious possession of the whole of said claim on the 9th day of January, 1889, and ever since have been in the uninterrupted, exclusive, open and notorious possession of the whole of said claim. The said defendant in its said answer then sets up its written lease to the defendant M. D. McCumber, dated on the 15th day of August, 1908.

Paragraph IV of the answer of the defendant The Pacific Coal and Transportation Company alleges that the alleged placer mining claim described in paragraph IV of plaintiff's complaint as Bench No. 1 Moonlight Creek, near Moonlight Springs, covers and embraces an overlap of a large portion of the westerly end of the Grant claim above described and now in possession of said answering defendant as above mentioned, the exact boundaries and limitations claimed by said plaintiff being unknown to said answering defendant; that said plaintiff has no right. title, interest or estate in and [9] to that said part or portion so claimed of the said Grant claim, but wrongfully and unlawfully and without right asserts title and ownership thereto; and said defendant then again alleges that it is in possession of said overlap.

In its second affirmative defense said defendant sets up ownership in the said Grant claim and alleges that it and its grantors and predecessors in interest have been in the uninterrupted, notorious and exclusive possession of the whole of said placer claim under color and claim of said title by reason of said Grant location ever since the 9th day of January, 1899.

The third affirmative defense of said defendant alleges that said defendant was in the exclusive possession of the said overlap at the time of the commencement of this action by plaintiff.

In the fourth affirmative answer said defendant pleads an estoppel against plaintiff. The said defendant then prays judgment:

First. That the complaint of plaintiff be dismissed.

Second. . That it be decreed that the defendant The Pacific Coal and Transportation Company is the owner in fee of the whole of said Grant claim as above described.

Fourth. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of said Grant claim as above described.

Fifth. That it be adjudged and decreed that the plaintiff be forever barred and enjoined from asserting any claim, right, title, interest or estate in or to any part or portion of said Grant claim as above described.

Seventh. For such other and further relief as may seem meet and proper to the Court.

To the answers of said defendants plaintiff filed a reply denying all of the several affirmative answers.

The cause is now before the Court upon the motions of defendant, The Pacific Coal and Transportation Co., and defendant M. D. McCumber, for an order assigning this cause on the jury [10] trial calendar and for fixing the date of the trial of said action, which raises the question whether said cause should be tried before the Court as a suit in equity or before the Court and jury as an action at law.

The complaint is evidently framed under sec. 475 of the Alaska Code, and plaintiff's attorneys in argument contended that it is a suit in equity to quiet title and to determine adverse claims, while defendants contend in their argument and brief that they are entitled to a jury trial upon the question of possession and title and that the case should be tried before a jury, and cites sec. I, article VII, of the Constitution of the United States, which they contend entitled them to a jury trial in a cause of this nature. Counsel for defendants cite a number of cases in support of this contention, but rely chiefly upon the case of Carlson vs. Sullivan, 146 Fed. Rep. 476, and the case of Donahue vs. Meister, 25 Pac. Rep. 1096.

The case of Carlson vs. Sullivan was a suit in partition which went to the Circuit Court of Appeals, Ninth Circuit, from this Division, but the complaint in that case shows that the plaintiff was not in possession and that the defendants, who were in possession, were disputing the title of plaintiff.

In the same volume of the Fed. Rep., page 480, is



another case which went from this Division, entitled *Forderer vs. Schmidt*, where the Circuit Court of Appeals draws the distinction between a case where the plaintiff is out of possession and his title is disputed, and a case where the plaintiff is out of possession and whose title is not disputed. I do not think that either case is decisive of the question before the Court on this motion.

The Circuit Court of Appeals, Ninth Circuit, in the case of *Madden vs. McKay*, reported in 144 Fed. Rep. 64, seems to very clearly lay down the proper procedure in a case of this character and appears to establish the rule by which this Court should be [11] guided in passing upon the question as to whether or not an action should be tried to a court sitting as a court of equity or should be transferred to the law side of the court and tried to a jury.

We quote from the opinion in said case:

“Under such a statute (sec. 475 of the Alaska Code), if the facts pleaded present a case of equitable cognizance, the cause should be heard upon the equity side of the court according to the procedure provided for the disposition of such cases, and, if the complaint is sustained, the plaintiff will be given equitable relief. If, on the other hand, the facts alleged are such as to bring the case within the cognizance of a court of law, it will be tried as an action at law and the right of the parties to a jury trial will be conserved. If the complaint be framed ostensibly as a bill in equity praying for equitable relief and yet is in substance a complaint in an action at law, the remedy of the defendant is to move

that it be dealt with and heard as an action at law.”

This, in substance, is what the defendants are now demanding in this case, but it will be seen from the quotation from the above case that the issue is determined upon the allegations of the complaint. Defendants in their argument practically admit that the complaint in the case at bar is sufficient under section 475 but make the contention that said section is unconstitutional under the decision of *Donahue vs. Meister, supra*, and *Whitehead vs. Shattuck*, 138 U. S. 146; and further contend that by reason of the fact that the defendant denies the possession of plaintiff, it changes the form of action from one in equity to one in law.

The Supreme Court of the State of Oregon in a number of decisions has sustained the validity of their section 500, which in substance is the same as our section 475, and even has gone further in that the court has held that plaintiff need not be in possession in order to maintain the action if the defendant is not in possession. [12]

*Coolidge and McClaine vs. Forward*, 11 Or. 118.

*Thompson vs. Woolf*, 8 Or. 455.

In *Goldsmith vs. Gilliland* (District Court of Oregon), 22 Fed. Rep. 867, Judge Deady says:

“But in a suit brought under sec. 500 aforesaid (Oregon Code, which is the same as our section 475) the plaintiff is not required to state the nature and circumstances of the defendant’s claim or to deny knowledge thereof, but in this respect he is only bound to allege the making of such claim and that it is wrongful, and call upon



the defendant to set it forth in his answer and submit its validity to the judgment and decision of the court. . . . Plaintiff may in any case avail himself of the statute.”

The reasoning in the case of *Holland vs. Challen*, 110 U. S. 23, is very apt when considering cases under our Code. In this case the Court quotes a Kentucky statute, which is very similar to ours; also the statute of Nebraska, which is very much broader than ours, as it authorizes a suit even to parties out of possession.

The Supreme Court of the United States has sustained the Oregon statute in the well-considered case of *Stark vs. Starrs*, 73 U. S. 409, where Judge Field, delivering the opinion of the Court, says:

“This is a suit in equity to quiet the title of the plaintiff to certain parcels of land situated in the city of Portland, in the State of Oregon. It is founded upon a statute of that State which provides that ‘any person in possession of real property may maintain a suit in equity against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest.’ This statute confers a jurisdiction beyond that ordinarily exercised by courts of equity, to afford relief in the quieting of title and possession of real property. By the ordinary jurisdiction of those courts a suit would not lie for that purpose, unless the possession of the plaintiff had been previously disturbed by legal proceedings on the part [13] of the defendant, and the right

of the plaintiff had been sustained by successive judgments in his favor.

“The equity asserted in such cases had its origin in the prolonged litigation which the action of ejectment permitted. That action being founded upon a fictitious demise between fictitious parties, a recovery therein constituted no bar to a second similar action, or to any number of similar actions for the same premises. With slight changes in these fictions a new action might be instituted and conducted as though no previous action had ever been commenced. Thus the party in possession, though successful in every case, might be harassed if not ruined by the continued litigation. To prevent such litigation, after one or more trials, and to secure peace to the party in possession, courts of equity interposed upon proper application and terminated the controversy.

“By the statute in question it is unnecessary in order to obtain this interposition of equity for the party in possession to delay his suit until his possession had been disturbed by legal proceedings, and judgment in those proceedings has passed in his favor. It is sufficient that a party out of possession claims an estate or interest in the property adverse to him. He can then at once commence his suit, and require the nature and character of such adverse estate or interest to be set forth and subjected to judicial investigation and determination, and that the right of possession as between him and the claimant shall be forever quieted.”

The case of Wehrman vs. Conklin, 155 U. S. 322, cites with approval the case of Holland vs. Challen, *supra*, and goes extensively into the question of the jurisdiction of equity and its origin to quiet title at common law and also under the codes of different states. This case alone would be decisive of both points raised by defendants as it distinguishes the case of Whitehead vs. Shattuck relied upon by defendants and shows that it is not applicable to the case at bar. This case was also followed by Judge Rodey in Hernandez vs. J. Ochoa y Hermano, 4 Porto Rico Fed. Rep. 400, which is a very instructive decision. [14]

In the case of Angus vs. Craven, 64 Pac. Rep. 1091, the Supreme Court of California arrives at a different conclusion from that in Donahue vs. Meister, *supra*, and in effect overrules it. This is a very well-considered case and seems to be more in accord with the better authorities than the Donahue case.

An examination of the California statute, which appears to be the same as the New Mexico statute, shows that they are both radically different from the Alaska Code in that they provide that a party may maintain an action to determine adverse claims without designating what character of action, while our Code provides that a party in possession may maintain an action of an equitable nature.

The Court has considered this case so far solely upon the allegations of the complaint and the denials in the answer, and has reached the conclusion that even thus considered the cause should be retained



on the equity side of the court, but it will be observed that the affirmative defenses set up in defendants' answers, or at least some of them, are purely equitable and the defendants pray for equitable relief. Under such a state of the pleadings the authorities seem to hold that, even if it should develop that the plaintiff was not in possession at the time of the commencement of the action, the defendants have submitted themselves to the jurisdiction of a court of equity and the court sitting as such might determine the whole controversy.

State vs. Blize, 37 Oreg. 408.

O'Hara vs. Parker, 27 Oreg. 172.

32 Cyc., pages 1338 and 1367, and cases cited.

The rule seems to be that if a defendant does not wish to submit himself to the jurisdiction of a court of equity he must, before answering to the merits, have the jurisdictional facts determined either by demurrer or proper plea.

Defendants' motions are denied.

CORNELIUS D. MURANE,

District Judge.

Nome, Alaska, May 27, 1911. [15]

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. The Pacific Coal and Transportation Company, a Corporation, and M. D. McCumber, Defendants. Opinion. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 27, 1911. John Sundback, Clerk. By R., Deputy. [16]



**[Minutes—May 27, 1911.]**

*In the District Court for the District of Alaska, Second Division.*

Term Minutes, General, 1911, Term, beginning  
February 1, 1911.

Saturday, May 27, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

The Court handed down an opinion herein denying the motion to set this cause for trial before the Jury, to which ruling the defendants, through their counsel, excepted and exception was allowed.

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

Mr. J. Allison Bruner gave notice of a motion to submit certain issues herein to the Jury, said motion to be taken up on Saturday next. [17]

**[Minutes—June 17, 1911.]**

*In the District Court for the District of Alaska, Second Division.*

Term Minutes, General, 1911, Term, beginning  
February 1, 1911.

Saturday, June 17, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.,

vs.

PACIFIC C. & T. CO. et al.

The motion to submit certain issues of fact to the jury was argued by counsel for plaintiff and defendants, and the Court, being advised in the premises, denied said motion, to which ruling the defendants excepted and exception was allowed.

By stipulation of counsel this cause was set for trial on Tuesday, September 5, 1911, subject to a motion for continuance.    **[18]**

[**Minutes—October 26, 1911.**]

*In the District Court for the District of Alaska, Second Division.*

Term Minutes, General, 1911, Term, beginning  
February 1, 1911.

Thursday, October 26, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

The motion for continuance of the trial of the above-entitled cause came on regularly for hearing, the defendants (moving parties) being represented by Mr. William A. Gilmore, Mr. Elwood Bruner and Mr. Geo. B. Grigsby, the plaintiff by Mr. O. D. Cochran and Mr. G. J. Lomen. Motion argued and submitted. During the course of the argument Mr. G. J. Lomen read a motion for an order directing the Clerk not to issue a second commission to take the deposition of Andrew Jensen. Motion filed. [19]

[Minutes—October 27, 1911.]

*In the District Court for the District of Alaska, Second Division.*

Term Minutes, General, 1911, Term, beginning  
February 1, 1911.

Friday, October, 27, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO. et al.

The Court announced its decision on defendants' motion for continuance, heretofore submitted, and denied the same. An exception to the order was asked and allowed. Mr. William A. Gilmore, on behalf of defendants, gave notice of motion for a change of venue. Defendants allowed until Thursday next to file said motion and the hearing thereon set for Saturday, November 4, 1911. [20]



**[Minutes—November 4, 1911.]**

*In the District Court for the District of Alaska,  
Second Division.*

Term Minutes, General, 1911, Term, beginning  
February 1, 1911.

Saturday, November 4, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
Presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO.  
et al.

The motion of defendants for an order setting and assigning this cause for trial, at Nome, before another Judge, came on regularly for hearing, Mr. William A. Gilmore and Mr. Elwood Bruner appearing for defendants, and Mr. G. J. Lomen, Mr. O. D. Cochran and Mr. Geo. D. Schofield appearing for plaintiff. Mr. G. J. Lomen presented and filed objections to the motion. Mr. O. D. Cochran presented and filed objections to the motion. After argument, the motion being submitted, the Court denied the motion.

Thereupon Mr. William A. Gilmore moved the Court for leave to file amended answer for defendant McCumber. Disposition of the application went

over until Monday, November 6, 1911, at 10 A. M., the Court directing defendants to file written application.

Mr. O. D. Cochran, on behalf of plaintiff, moved the Court to set this cause for trial for a day certain. Disposition of the motion continued until Monday, November 6, 1911, at 10 A. M. [21]

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**[Minutes—November 6, 1911.]**

*In the District Court for the District of Alaska,  
Second Division.*

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Monday, November 6, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
Presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO.  
et al.

Mr. William A. Gilmore presented and filed, on behalf of defendants, a written motion for leave to file amended answers. Mr. Lomen, on behalf of plaintiff, presented and filed plaintiff's objections thereto.

After argument by respective counsel, the Court granted defendants leave to file amended answers.

Upon motion of Mr. O. D. Cochran, for plaintiff, the Court set this cause for trial 10 A. M., November 13, 1911. [22]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Amended Answer of Defendant Pacific Coal &  
Transportation Company.**

Comes now defendant, Pacific Coal & Transportation Company, by leave of Court first had and obtained, and for an amended answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits paragraphs I and II of plaintiff's complaint.

II.

Denies each and every allegation, matter and thing contained in paragraph IV of plaintiff's complaint, and the whole thereof.

III.

Admits that the defendant, the Pacific Coal & Transportation Company is a corporation and claims an estate or interest in a portion of the premises men-



tioned in paragraph V of plaintiff's complaint, as hereinafter affirmatively stated and plead.

## IV.

Denies each and every allegation, matter and thing contained in paragraph VI and the whole thereof.

[23]

## V.

Answering paragraph VII of plaintiff's complaint, defendant denies each and every allegation, matter and thing therein contained, save and except that the said premises described are of great value.

And for a first, further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

## I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee (subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim, made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within said location, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under the



mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said Grant was by him named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" claim, and contained [24] at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $9^{\circ} 44'$  W. 312.4 ft. to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $00^{\circ} 11'$  E. 650 ft. to stake No. 3; thence S.  $79^{\circ} 58'$  W. 1280.7 ft. to stake No. 4; thence S.  $10^{\circ} 00'$  E. 393 ft. to the initial stake or place of beginning.

## II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant Pacific Coal & Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the

United States) of the whole of said placer claim, and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors, in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim.

### III.

That on the 15th day of August, A. D. 1908, the said defendant, Pacific Coal & Transportation Company, was so the owner of said claim and was then and there in the sole, quiet, exclusive, uninterrupted and notorious possession of the said claim and the whole thereof, and on said date the said defendant, Pacific Coal & Transportation Company did, by an instrument [25] in writing, lease, let and demise the whole of said placer claim to defendant, M. D. McCumber, who thereupon immediately entered into the exclusive possession of the whole of said claim and commenced to mine and prospect the same for gold, in accordance with the terms of said lease; that thereafter, on the 1st day of May, 1909, for a valid consideration, the term of said lease was extended in writing, and thereafter on the 28th day of April, 1911, the term of said lease was again extended in writing; that ever since said 15th day of August, 1908, this answering defendant, M. D. McCumber, has been in the exclusive possession of the said mining claim, under and by virtue of said written lease

and the said written extensions thereof.

#### IV.

That the alleged placer mining claim described in paragraph IV of plaintiff's complaint, and called by plaintiff Bench No. 1 Moonlight Creek, near Moonlight Springs, covers and embraces, as described in said paragraph, an overlap of a large portion of the westerly end of said "Grant" claim above described, and now in the possession of this answering defendant and its lessee, as above mentioned, the exact boundaries and limitations claimed by the said plaintiff being unknown to this answering defendant, but that said plaintiff has no right, title, interest or estate in and to the said part or portion so claimed of said "Grant" claim, but wrongfully and unlawfully and without right, asserts title and ownership thereto; that said plaintiff has no right, title, interest, ownership or possession of, in or to any of the lands or premises embraced within the said "Grant" placer claim above described by metes and bounds, and the said plaintiff has not now and never has had the possession or right of possession in and to any part or portion thereof. [26]

And for a second further, separate and affirmative defense to plaintiff's complaint this answering defendant alleges:

#### I.

That the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, and defendant M. D. McCumber, as lessee of said defendant, Pacific Coal & Transportation Company, has had the uninterrupted, adverse, notorious and ex-



clusive possession of the whole of that certain placer mining claim known as and called No. 1 Bench, also called "Moonlight" or "Grant" claim, and described by metes and bounds as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $9^{\circ} 44'$  W. 312.4 ft. to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $0^{\circ} 11'$  E. 650 ft. to stake No. 3; thence S.  $79^{\circ} 58'$  W. 1280.7 ft. to stake No. 4; thence S.  $10^{\circ} 00'$  393 ft. to the initial stake or place of beginning.

under and by virtue of a valid and subsisting mineral location thereof, made by one W. N. Grant, on the 9th day of January, 1899, in compliance with the mineral land laws of the United States. And this answering defendant, the Pacific Coal & Transportation Company, its grantors and predecessors in interest, and lessees, have been in such uninterrupted, adverse, notorious and exclusive possession of the whole of said placer claim under color and claim of said title by reason of said Grant location ever since said 9th day of January, 1899.

And for a third further and affirmative defense to plaintiff's complaint, this answering defendant alleges as follows: [27]

#### I.

That on the 7th day of November, 1910, the date upon which the plaintiff instituted the above-entitled



suit, and for a long time prior thereto, and ever since, this answering defendant, and its lessee, M. D. McCumber, was in the exclusive, open and notorious possession of the whole of that certain placer mining claim known as and called Bench No. 1 at the base of Anvil Mountain, also called "Moonlight" or "Grant" claim, under and by virtue of a valid and subsisting mineral location made by one W. N. Grant on the 9th day of January, 1899.

## II.

That the alleged placer claim, as described in paragraph IV of plaintiff's complaint, overlaps and conflicts with the westerly portion of the said Bench No. 1 at the base of Anvil Mountain or Moonlight or Grant claim above described; that on said 7th day of November, 1910, and for a long time prior thereto, this answering defendant, and its lessee, M. D. McCumber, was in the possession of the whole of said "Grant" placer mining claim, and was actively engaged in mining on the portion of said claim embraced within the alleged conflict, and its lessee, defendant M. D. McCumber, had, on said conflict area a mining cabin, mining tools, implements and mining equipment at said time, and for a long time prior thereto, and was actively engaged in prospecting and mining thereon.

## III.

That the plaintiff, Pioneer Mining Company, was not in possession of said conflict area or any part thereof, and had no right, title, interest or estate therein, and had not on said date, or at any time since said date, the possession of or the right to mine or

prospect the same, or to maintain the above-entitled action in equity. [28]

And for a fourth further, separate and affirmative defense to plaintiff's complaint, this answering defendant alleges:

### I.

That on the 9th day of January, 1899, one W. N. Grant made a valid and subsisting placer mining location known as and called No. 1 Bench, sometimes called "Moonlight" or "Grant" claim, and described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. 9° 44' W. 312.4 ft. to stake No. 1; thence N. 79° 59' E. 1268.5 ft. to stake No. 2; thence N. 00° 11' E. 650 ft. to stake No. 3; thence S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

### II.

That thereafter by mesne conveyances the defendant, Pacific Coal & Transportation Company, succeeded to all of the rights of the said Grant in and to the said placer claim, and the said defendant, Pacific Coal & Transportation Company, is now the owner in fee (subject only to the paramount title of the United States) of said placer mining claim.

### III.

That this answering defendant and its lessee, M. D. McCumber are now, and ever since the 15th day of

August, 1908, have been, in the possession of and entitled to the possession of the whole of said claim.

IV.

That the plaintiff in the above-entitled action, in paragraph IV of its complaint, asserts ownership, title and possession to a large portion of the westerly part of said "Grant" placer claim as described in said paragraph IV of [29] said complaint.

V.

That the plaintiff ought not to be permitted to allege and assert that it is the owner and entitled to the possession of said part of said "Grant" claim, or any other portion thereof, because that ever since said 9th day of January, 1899, this answering defendant, the Pacific Coal & Transportation Company, its predecessors and grantors, were the owners of the said Grant claim, as above described by metes and bounds and in the exclusive possession thereof, and entitled to such exclusive possession, and because that ever since said 9th day of January, 1899, the defendant, the Pacific Coal & Transportation Company, its grantors and predecessors in interest, were, have been and now are, in the uninterrupted, open, adverse and notorious possession of the whole of said Grant placer claim and the conflict area thereof, and have been engaged for more than seven (7) years last past in operating, mining and developing the said premises and particularly the part in controversy in this action, with full knowledge and notice on the part of said plaintiff, and without any objection, interruption or complaint on its behalf; that the defendant, Pacific Coal & Transportation Company, and its les-



sees have expended large sums of money in mining, prospecting and developing the said area in conflict of said Grant claim, without objection or complaint of, from or on behalf of said plaintiff, and with its full knowledge, ever since the location thereof, on January 9th, 1899.

## VI.

That by reason of the premises above stated, the plaintiff is estopped from alleging and asserting that it is the owner of any part or portion of the said Grant placer [30] claim as above described, or that it is entitled to the possession thereof.

And for a fifth further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

## I.

That at all the times mentioned in plaintiff's complaint the defendant, Pacific Coal & Transportation Company its grantors and predecessors in interest, and its lessees, were and are in the actual, open, exclusive, notorious and uninterrupted possession of the premises now being mined by it and its lessee, a portion of which is covered and described by the description set forth in paragraph IV of plaintiff's complaint, and said defendant and its grantors and predecessors in interest, have at all times been such owners under and by virtue of valid and subsisting mining locations, the exterior boundaries of which were and are well marked and defined on the ground by permanent monuments and marks surrounding the mining works and operations of its lessee, M. D. McCumber, and answering defendant and its said

lessee are in the possession and entitled to the possession of the same by reason thereof.

And for a sixth further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

I.

That at all times mentioned in plaintiff's complaint the defendant Pacific Coal & Transportation Company, its grantors [31] and predecessors in interest, and its lessees, were and are in the actual, open, exclusive, notorious and uninterrupted possession of the land and premises named and called Bench No. 1 at the western base of Anvil Mountain, and also named and called Moonlight or Grant Claim, described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. 9° 44' W. 312.4 ft. to stake No. 1; thence N. 79° 59' E. 1268.5 ft. to stake No. 2; thence N. 00° 11' E. 650 ft. to stake No. 3; thence S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

and these answering defendants were and are in such actual, open, exclusive and uninterrupted possession of said lands and premises above described, under and by virtue of a valid and subsisting mining location made by its grantor on the 9th day of January, 1899, under and in accordance with the mineral land laws of the United States, and the defendants and

their grantors and predecessors in interest were in the possession of the said lands and premises on the 7th day of November, 1910, the date when the plaintiff commenced the above-entitled action, and for more than ten years prior thereto had been and were in open, exclusive, notorious, uninterrupted possession of the whole of said lands and premises.

## II.

That on the date when the plaintiff commenced the above-entitled action, to wit, on the 7th day of November, 1910, the said plaintiff's said cause of action was barred by the provisions of sections 3 and 4 of chapter 2, Part IV of the Civil Code of Alaska, and by virtue of section 361 of chapter 38, Part IV of the Civil Code of Alaska.

## III.

That by reason of the said possession by these answering [32] defendants, their grantors and predecessors in interest of the lands and premises in controversy in this action, as above described, for a period of more than ten (10) years immediately preceding the commencement of this action, the said plaintiff is barred from maintaining and prosecuting this action under the sections above referred to and set forth.

And for a seventh further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

## I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee



(subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within said location, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under the mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said [33] Grant was by him named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" claim, and contained at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds as follows, to-wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S. 9° 44' W. 312.4 ft. to stake No. 1; thence N.

79° 59' E. 1268.5 ft. to stake No. 2; thence N. 00° 11' E. 650 ft. to stake No. 3; thence S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

## II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant, Pacific Coal & Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the United States) of the whole of said placer claim, and entered into exclusive, open, and notorious possession of the whole of said claim, under and by virtue of the title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim.

## III.

That during all of the times heretofore mentioned and while defendants, their grantors and predecessors in interest [34] were in such possession of the lands and premises in this controversy as above described, and on or about the — day of ———, 1901, the plaintiff, Pioneer Mining Company, was organized under the laws of the State of Washing-

ton; that for a long time prior to such organization Jafet Lindeberg, John Brynteson and Erick O. Lindblom, the organizers and principal stockholders of the said plaintiff Pioneer Mining Company, were doing business at Nome, Alaska, as a copartnership known as and called the Cape Nome Pioneer Company and also the Pioneer Company and also Lindeberg, Brynteson & Lindblom, and were the owners and predecessors of the Pioneer Mining Company, a corporation, to all of the lands and premises acquired by the said plaintiff corporation, at the time of its organization; that the said Jafet Lindeberg is now and has been at all times since the organization of the plaintiff corporation, in 1901, the president and general manager of said Pioneer Mining Company, plaintiff herein.

#### IV.

That between the years 1900 and 1904, the said Jafet Lindeberg, John Brynteson and Erick O. Lindblom were copartners and doing business under the firm name and style of the Moonlight Springs Water Company, at Nome, Alaska, and during the year 1903, were the owners and in the possession of a certain placer mining claim known as and called the Moonlight claim, located by Robert Lyng in the month of November, 1898, and situated adjoining and west of the premises claimed and described by the defendants in this action; that the said Moonlight Springs Water Company was engaged in bartering and selling water to the town of Nome, conveying the same from a natural spring situated on said placer claim near the west end of the placer claim of defendants. [35]



## V.

That on the 18th day of May, 1903, the said Moonlight Springs Water Company, as then constituted, consisted of said Jafet Lindeberg, Erick O. Lindblom and John Brynteson, copartners, began an action in the above-entitled court, being Cause #921, entitled Jafet Lindeberg et al., plaintiffs, vs. George Doverspike et al., defendants; that the defendants in said action, George Doverspike, C. T. Howard, George Crawford and Fred Williams were lessees of the defendant, Pacific Coal & Transportation Company under a written lease executed in the fall of 1902, expiring the month of June, 1903, upon the land and premises described herein, as the Grant claim, and were working and mining the said claim and extracting the gold from the same by means of mining and depositing the same in dumps of pay gravel upon the surface of the westerly half of said Grant claim as above described, and near the easterly end of said Moonlight claim, and within the boundaries of the ground in controversy in this action.

## VI.

That in and by the said action commenced as above alleged, the said Moonlight Springs Water Company sought to enjoin the said lessees, Doverspike et al. from carrying on their mining operations upon the ground and for the reason alleged in the complaint in said action, that said lessees were polluting the waters of Moonlight Springs the source from which the said Moonlight Water Company obtained its supply of water for its market; that the said lessees filed their answer in the said action, setting up the title of the

defendant, Pacific Coal & Transportation Company in and to the land and premises in controversy in this action, and setting forth their lease of the same; that a temporary restraining order was issued in said action on behalf of said plaintiff, Moonlight Springs [36] Water Company, and against the said lessees and subsequently upon the hearing on the merits, the same was dissolved; that thereafter the said lessees, George Doverspike et al., began an action in the above-entitled court on the 29th day of June, 1904, being Cause #1147, entitled C. T. Howard, Frank Doverspike, George Crawford, plaintiffs, vs. Jafet Lindeberg, Erick O. Lindblom and John Brynteson, copartners doing business under the firm name and style of the Moonlight Springs Water Company et al., defendants; that the said action was thereafter tried and on the 17th day of April, 1909, a judgment was obtained against the said defendants for the sum of Twenty-five Hundred Dollars (\$2500.00) and costs of suit; that thereafter the said defendants paid and satisfied the said judgment in the month of October, 1909.

That during all of the times hereinbefore mentioned while all of said litigation was pending, the said Jafet Lindeberg was the president and general manager of the plaintiff, Pioneer Mining Company, in this action, and had personal charge of all of its mining affairs and business transactions within the District of Alaska; that during all of the said times herein mentioned, the said plaintiff, Pioneer Mining Company, recognized the title of the defendant, Pacific Coal & Transportation Company, and its lessees

in and to the land and premises in controversy in this action, and never at any time during all of said litigation, asserted any claim or title thereto, and never claimed or asserted ownership, possession or title thereto but at all times recognized the defendant and its laymen as being the owners in the possession and entitled to the possession of said lands and premises now in controversy; that in the year 1906 the Moonlight Water Company, a corporation, was organized by the then owners thereof, the said Moonlight Springs Water Company, a copartnership and thereafter during all the time that the said litigation was pending, the said Moonlight Water [37] Company, a corporation, was a subsidiary corporation organized, managed, operated and owned by the plaintiff, Pioneer Mining Company, and its said principal stockholders and officers, Jafet Lindeberg, Erick O. Lindblom and John Brynteson, were the officers and principal stockholders of the said Moonlight Water Company during all of said time.

## VII.

That by reason of the matters and things above alleged the plaintiff, Pioneer Mining Company, ought not and should not be permitted to now claim or assert ownership or title to the lands and premises in controversy, in this action; that by reason of the matters and things herein alleged the plaintiff is estopped from asserting any right, title or interest whatsoever in or to the land and premises in controversy in this action.

WHEREFORE, this answering defendant demands judgment as follows:



1. That the said complaint of plaintiff be dismissed.

2. That it be adjudged and decreed that the defendant, Pacific Coal & Transportation Company, is the owner in fee of the whole of said Grant claim, as above described.

3. That it be adjudged and decreed that the title to the ground in controversy be quieted and confirmed in this answering defendant, subject to the leasehold estate of the defendant, M. D. McCumber.

4. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of the said "Grant" claim as above described.

5. That it be adjudged and decreed that the plaintiff be forever barred and enjoined from asserting any claim, right, [38] title, interest or estate in and to any part or portion of the said "Grant" claim as above described.

6. That this answering defendant do have and recover its costs and disbursements in this action.

7. For such other and further relief as may seem meet and proper to the Court.

ELWOOD BRUNER,

Attorney for Answering Defendant Pacific Coal & Transportation Company.

United States of America,

District of Alaska,—ss.

J. Allison Bruner, being first duly sworn, deposes and says:

That he is attorney in fact for the Pacific Coal & Transportation Company, the answering defendant

herein; that he has heard read the above and foregoing answer, knows the contents thereof, and the same is true as he verily believes.

J. ALLISON BRUNER.

Subscribed and sworn to before me this 4th day of November, 1911.

[Notarial Seal]    WILLIAM A. GILMORE,  
Notary Public in and for the District of Alaska.  
Rec'd. copy this 4th day of Nov., 1911.

O. D. COCHRAN,  
Of Attys. for Plf.

[Endorsed]: Original. No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. The Pacific Coal & Transportation Co., M. D. McCumber, Defendant. Amended Answer of Pacific Coal & Transportation Co. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 6, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner, Attorney at Law, Nome, Alaska, Attorney for P. C. & T. Co. [39]

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Amended Answer of Defendant M. D. McCumber.**

Comes now defendant, M. D. McCumber, by leave of Court first had and obtained, and for an amended answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

Admits paragraphs I and II of plaintiff's complaint.

II.

Denies each and every allegation, matter and thing contained in paragraph IV of plaintiff's complaint, and the whole thereof.

III.

Admits that the defendant the Pacific Coal & Transportation Company, a corporation, and this answering defendant, M. D. McCumber, claims, and each of them claim, an estate or interest in a portion of the premises mentioned in paragraph V of plaintiff's complaint, as hereinafter affirmatively stated and plead. [40]



## IV.

Denies each and every allegation, matter and thing contained in paragraph VI and the whole thereof.

## V.

Answering paragraph VII of plaintiff's complaint, defendant denies each and every allegation, matter and thing therein contained, save and except that the said premises described are of great value.

And for a first, further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

## I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee (subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim, made by one W. N. Grant, on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within said location, were vacant, unoccupied and unappropriated mineral land laws of the United States, and then and mineral lands belonging to the government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under [41] the mineral land laws of the United States, and then and there performed each and every act thereon required

by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said Grant, was by him named and called No. 1 Bench, and subsequently named and called "Moonlight" or "Grant" claim, and contained at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds, as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $9^{\circ} 41'$  W. 312.4 feet to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $00^{\circ} 11'$  E. 650 ft. to stake No. 3; thence S.  $79^{\circ} 58'$  W. 1280.7 ft. to stake No. 4; thence S.  $10^{\circ} 00'$  E. 393 ft. to the initial stake or place of beginning.

## II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant Pacific Coal & Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the United States) of the whole of said placer claim, and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the

title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said Defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim. [42]

### III.

That on the 15th day of August, A. D. 1908, the said defendant, Pacific Coal & Transportation Company, was *so the* owner of said claim, and was then and there in the sole, quiet, exclusive, uninterrupted and notorious possession of the said claim and the whole thereof, and on said date the said defendant Pacific Coal & Transportation Company did, by an instrument in writing, lease, let and demise the whole of said placer claim to this answering defendant, M. D. McCumber, who thereupon immediately entered into the exclusive possession of the whole of said claim, and commenced to mine and prospect the same for gold, in accordance with the terms of said lease; that thereafter on the first day of May, 1909, for a valid consideration, the term of said lease was extended in writing, and thereafter on the 28th day of April, 1911, the term of said lease was again extended in writing; that ever since said 15th day of August, 1908, this answering defendant, M. D. McCumber, has been in the exclusive possession of the said mining claim, under and by virtue of said written lease and the said written extensions thereof, and has kept and performed the covenants thereof on his part to be kept and per-



formed; and this answering defendant, M. D. McCumber, has and claims the leasehold estate mentioned in said written instruments, and the exclusive right of possession of the whole of said mining claim, and the right to mine the same under the terms, conditions and covenants of said written lease and extensions thereof; that a copy of said lease and written extensions thereof are hereunto attached, marked Exhibits "A," "B" and "C."

#### IV.

That the alleged placer mining claim described in paragraph IV of plaintiff's complaint, and called by plaintiff Bench Claim No. 1, Moonlight Creek, near Moonlight Springs, covers and embraces as described in said paragraph, an overlap [43] of a large portion of the westerly end of said Grant claim above described, and now in the possession of this answering defendant as above mentioned, the exact boundaries and limitations claimed by the said plaintiff being unknown to this answering defendant, but that said plaintiff has no right, title, interest or estate in and to the said part or portion so claimed of said "Grant" claim, but wrongfully and unlawfully and without right, asserts title and ownership thereto; that said plaintiff has no right, title, interest, ownership or possession of, in or to any of the lands or premises embraced within the said "Grant" placer claim above described by metes and bounds, and the said plaintiff has not now and never has had, the possession or right of possession in and to any part or portion thereof; that this answering defendant, under and by virtue of his said

leasehold estate is in the possession and is entitled to the exclusive possession of the whole of said Grant placer claim.

And for a second, further, separate and affirmative defense to plaintiff's complaint, this answering defendant alleges:

I.

That the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, and this answering defendant as lessee of said defendant, Pacific Coal & Transportation Company, has had the uninterrupted, adverse, notorious and exclusive possession of the whole of that certain placer mining claim known as and called No. 1 Bench; also called Moonlight or Grant claim, and described by metes and bounds [44] as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng Placer Claim, near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $9^{\circ} 44'$  W., 312.4 ft. to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $00^{\circ} 11'$  E. 650 ft. to stake No. 3; thence S.  $79^{\circ} 58'$  W. 1280.7 ft. to stake No. 4; thence S.  $10^{\circ} 00'$  E. 393 ft. to the initial stake or place of beginning.

under and by virtue of a valid and subsisting mineral location thereof made by one W. N. Grant, on the 9th day of January, 1899, in compliance with the mineral land laws of the United States and this

answering defendant, and his lessor, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, have been in such uninterrupted, adverse, notorious and exclusive possession of the whole of said placer claim under color and claim of said title by reason of said Grant location ever since said 9th day of January, 1899.

And for a third, further and affirmative defense to plaintiff's complaint, this answering defendant alleges as follows:

I.

That on the 7th day of November, 1910, the date upon which the plaintiff instituted the above-entitled suit, and for a long time prior thereto, and ever since, this answering defendant was in the exclusive, open and notorious possession of the whole of that certain placer mining claim known as and called Bench No. 1 at the base of Anvil Mountain, also called Moonlight or Grant claim, under and by virtue of a valid and subsisting mineral location made by one W. N. Grant, on the 9th day of January, 1899. [45]

II.

That the alleged placer claim as described in paragraph IV of plaintiff's complaint, overlaps and conflicts with the westerly portion of the said Bench No. 1 at the base of Anvil Mountain or Moonlight or Grant claim above described; that on said 7th day of November, 1910, and for a long time prior thereto, this answering defendant was in the possession of the whole of said Grant Placer Mining Claim, and



was actively engaged in mining on the portion of said claim embraced within the alleged conflict and this answering defendant had, on said conflict area a mining cabin, mining tools, implements and mining equipment at said time, and for a long time prior thereto, and was actively engaged in prospecting and mining thereon.

### III.

That the plaintiff, Pioneer Mining Company, was not in possession of said conflict area or any part thereof, and had no right, title, interest or estate therein, and had not on said date, or at any time since said date, the possession of or the right to mine or prospect the same, or to maintain the above entitled action in equity.

And for a fourth, further, separate and affirmative defense to plaintiff's complaint, this answering defendant alleges:

### I.

That on the 9th day of January, 1899, one W. N. Grant made a valid and subsisting placer mining location, known as and called No. 1 Bench, sometimes called Moonlight or Grant [46] claim and described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $90^{\circ} 44'$  W. 312.4 ft. to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $00^{\circ} 11'$  E. 650 ft. to stake No. 3; thence

S. 79° 58' W. 1280.7 ft. to stake No. 4; thence S. 10° 00' E. 393 ft. to the initial stake or place of beginning.

II.

That thereafter by mesne conveyances the defendant, Pacific Coal & Transportation Company, succeeded to all of the rights of the said Grant in and to the said placer claim, and the said defendant, Pacific Coal & Transportation Company, is now the owner in fee (subject only to the paramount title of the United States) of said placer mining claim.

III.

That this answering defendant, by virtue of a written lease and written extensions thereof, is now, and ever since the 15th day of August, 1908, has been in the possession of and entitled to the possession of the whole of said claim as lessee for a term of years yet unexpired.

IV.

That the plaintiff in the above-entitled action, in paragraph IV of its complaint, asserts ownership, title and possession to a large portion of the westerly part of said Grant placer claim, as described in said paragraph IV of said complaint.

V.

That the plaintiff ought not to be permitted to allege and assert that it is the owner and entitled to the possession of said part of said Grant claim, or any other portion thereof, because that ever since said 9th day of January, [47] 1899, this answering defendant, and his lessor, the defendant,

Pacific Coal & Transportation Company, its predecessors and grantors, were the owners of the said Grant claim as above described by metes and bounds and in the exclusive possession thereof and entitled to such exclusive possession and because that ever since said 9th day of January, 1899, the defendant, Pacific Coal & Transportation Company and this answering defendant, their grantors and predecessors in interest, were, have been and now are in the uninterrupted, open, adverse and notorious possession of the whole of said Grant placer claim, and the conflict area thereof, and have been engaged for more than seven (7) years last past in operating, mining and developing said premises and particularly the part in controversy in this action, with full knowledge and notice on the part of said plaintiff and without any objection, interruption or complaint on its behalf; that the defendant, Pacific Coal & Transportation Company, and its lessees, have expended large sums of money in mining, prospecting and developing the said area in conflict of said Grant claim, without objection or complaint of from or on behalf of said plaintiff, and with its full knowledge, ever since the location thereof, on January 9th, 1899.

## VI.

That by reason of the premises above stated, the plaintiff is estopped from alleging and asserting that it is the owner of any part or portion of the said Grant placer mining claim as above described, or that it is entitled to the possession thereof. [48]

And for a fifth further, separate and affirmative



answer to plaintiff's complaint, this answering defendant alleges:

I.

That at all the times mentioned in plaintiff's complaint the defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest, and this answering defendant, M. D. McCumber, were and are in the actual, open, exclusive, notorious and uninterrupted possession of the premises now being mined by them, a portion of which is covered and described by the description set forth in paragraph IV of plaintiff's complaint, and said defendants, and their grantors and predecessors in interest, have at all times been such owners under and by virtue of valid and subsisting mining locations the exterior boundaries of which were and are well marked and defined on the ground by permanent monuments and marks surrounding the mining works and operations of this answering defendant, and answering defendant is in the possession and entitled to the possession of the same by reason thereof.

And for a sixth further, separate affirmative answer to plaintiff's complaint this answering defendant alleges:

I.

That at all the times mentioned in plaintiff's complaint the defendant the Pacific Coal & Transportation Company, its grantors and predecessors in interest, and this answering defendant, M. D. McCumber, were and are in the actual, open, [49] exclusive, notorious and uninterrupted possession

of the lands and premises named and called Bench No. 1 at the western base of Anvil Mountain, and also named and called Moonlight or Grant Claim, described by metes and bounds as follows:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $9^{\circ} 44'$  W. 312.4 ft. to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $00^{\circ} 11'$  E. 650 ft. to stake No. 3; thence S.  $79^{\circ} 58'$  W. 1280.7 ft. to stake No. 4; thence S.  $10^{\circ} 00'$  E. 393 ft. to the initial stake or place of beginning.

and these defendants were and are in such actual, open, exclusive and uninterrupted possession of said lands and premises above described, under and by virtue of a valid and subsisting mining location made by their grantor on the 9th day of January, 1899, under and in accordance with the mineral land laws of the United States, and the defendants and their grantors and predecessors in interest were in the possession of the said lands and premises on the 7th day of November, 1910, the date when the plaintiff commenced the above-entitled action and for more than ten years prior thereto had been and were in the open, exclusive, notorious, uninterrupted possession of the whole of said lands and premises.

## II.

That on the date when the plaintiff commenced

the above-entitled action, to wit, on the 7th day of November, 1910, the said plaintiff's said cause of action was barred by the provisions of sections 3 and 4 of chapter 2, Part IV of the Civil Code of Alaska, and by virtue of section 361 of chapter 38, Part IV of the Civil Code of Alaska.

### III.

That by reason of the said possession by these defendants their grantors and predecessors in interest of the [50] lands and premises in controversy in this action, as above described, for a period of more than ten (10) years immediately preceding the commencement of this action, the said plaintiff is barred from maintaining and prosecuting this action under the sections above referred to and set forth.

And for a seventh further, separate and affirmative answer to plaintiff's complaint, this answering defendant alleges:

### I.

That the defendant, Pacific Coal & Transportation Company, a corporation, is now and was at the time of the commencement of this suit, the owner in fee (subject only to the paramount title of the United States) of the land and premises hereinafter described and known as Bench No. 1 at the base of Anvil Mountain, and also called the "Moonlight" or "Grant" claim, under and by virtue of a valid location thereof as a placer mining claim, made by one W. N. Grant on the 9th day of January, 1899; that on said 9th day of January, 1899, the lands and premises hereinafter described and embraced within



said location, were vacant, unoccupied and unappropriated mineral lands belonging to the Government of the United States and on said 9th day of January, 1899, the said W. N. Grant entered thereon and located the same for a placer mining claim under the mineral land laws of the United States, and then and there performed each and every act thereon required by law to perfect and make a valid placer mining location of Government placer mineral land; that the said claim as thus located by said Grant was by him named and called No. 1 Bench, and subsequently [51] named and called "Moonlight" or "Grant" claim, and contained at the time of the original location thereof, by the said Grant an area, approximately, of twenty (20) acres; that said placer mining claim is described by metes and bounds as follows, to wit:

Commencing at the initial stake which is situated near the east center end of what is known as the Robert Lyng placer claim near Moonlight Springs, in the Cape Nome Mining and Recording District, District of Alaska, running thence S.  $9^{\circ} 44'$  W. 312.4 ft. to stake No. 1; thence N.  $79^{\circ} 59'$  E. 1268.5 ft. to stake No. 2; thence N.  $00^{\circ} 11'$  E. 650 ft. to stake No. 3; thence S.  $79^{\circ} 58'$  W. 1280.7 ft. to stake No. 4; thence S.  $10^{\circ} 00'$  E. 393 ft. to the initial stake or place of beginning.

## II.

That subsequent to the said 9th day of January, 1899, and after the location of said land as mineral land as above described by said W. N. Grant, and

while the same was a valid and subsisting placer location under the mineral land laws of the United States, by mesne conveyances from said W. N. Grant and his grantees, the defendant Pacific Coal and Transportation Company, a corporation, became the owner in fee (subject only to the paramount title of the United States) of the whole of said placer claim, and entered into exclusive, open and notorious possession of the whole of said claim, under and by virtue of the title acquired by and from the said W. N. Grant; and ever since the said 9th day of January, 1899, the said defendant, Pacific Coal & Transportation Company, its grantors and predecessors in interest and its lessees, have been in the uninterrupted, sole, exclusive and notorious possession of the whole of said placer claim.

### III.

That during all of the time heretofore mentioned and while defendants, their grantors and predecessors in interest were in such possession of the lands and premises in this controversy, as above described, and on or about the ——— [52] day of ———, 1901, the plaintiff, Pioneer Mining Company, was organized under the laws of the State of Washington; that for a long time prior to such organization Jafet Lindeberg, John Brynteson and Erick O. Lindholm, the organizers, and principal stockholders of the said plaintiff Pioneer Mining Company, were doing business at Nome, Alaska, as a copartnership known as and called the Cape Nome Pioneer Company and also the Pioneer Company and also Lindeberg, Brynteson & Lindblom, and

were the grantors and predecessors of the Pioneer Mining Company, a corporation, to all of the lands and premises acquired by the said plaintiff corporation, at the time of its organization; that the said Jafet Lindeberg is now and has been at all times since the organization of the plaintiff corporation, in 1901, the president and general manager of said Pioneer Mining Company, plaintiff herein.

#### IV.

That between the years 1900 and 1904, the said Jafet Lindeberg, John Brynteson and Erick O. Lindblom were copartners and doing business under the firm name and style of the Moonlight Springs Water Company, at Nome, Alaska, and during the year 1903, were the owners and in the possession of a certain placer mining claim known as and called the Moonlight claim, located by Robert Lyng in the month of November, 1898, and situated adjoining and west of the premises claimed and described by the defendants in this action; that the said Moonlight Springs Water Company was engaged in bartering and selling water to the town of Nome, conveying the same from a natural spring situated on said placer claim near the west end of the placer claim of defendants.

#### V.

That on the 18th day of May, 1903, the said Moonlight Springs Water Company, as then constituted, consisting of said [53] Jafet Lindeberg, Erick O. Lindblom and John Brynteson, copartners, began an action in the above-entitled court, being Cause #921, entitled Jafet Lindeberg et al., plaintiffs, vs. George



Doverspike et al., defendants; that the defendants in said action, George Doverspike, C. T. Howard, George Crawford and Fred Williams, were lessees of the defendant, Pacific Coal & Transportation Company, under a written lease executed in the fall of 1902, expiring the month of June, 1903, upon the land and premises described herein, as the Grant claim and were working and mining the said claim and extracting the gold from the same by means of mining and depositing the same in dumps of pay gravel upon the surface of the westerly half of said Grant claim as above described, and near the easterly end of said Moonlight claim, and within the boundaries of the ground in controversy in this action.

## VI.

That in and by the said action commenced as above alleged, the said Moonlight Springs Water Company sought to enjoin the said lessees, Doverspike et al., from carrying on their mining operations upon the grounds, and for the reason alleged in the complaint in said action, that said lessees were polluting the waters of Moonlight Springs the source from which the said Moonlight Water Company obtained its supply of water for its market; that the said lessees filed their answer in the said action, setting up the title of the defendant, Pacific Coal & Transportation Company in and to the land and premises in controversy in this action, and setting forth their lease of the same; that a temporary restraining order was issued in said action on behalf of said plaintiff, Moonlight Springs Water Company, and against the

said lessees and subsequently, upon the hearing on the merits, the same was dissolved; that thereafter the said lessees, George Doverspike et al., began [54] an action in the above-entitled court on the 29th day of June, 1904, being Cause #1147, entitled C. T. Howard, Frank Doverspike, George Crawford, plaintiffs, vs. Jafet Lindeberg, Erick O Lindblom and John Brynteson, copartners doing business under the firm name and style of the Moonlight Springs Water Company et al., defendants; that the said action was thereafter tried and on the 17th day of April, 1909, a judgment was obtained against the said defendants for the sum of Twenty-five Hundred Dollars (\$2,500.00) and costs of suit; that thereafter the said defendants paid and satisfied the said judgment in the month of October, 1909.

That during all of the times hereinbefore mentioned while all of said litigation was pending, the said Jafet Lindeberg was the president and general manager of the plaintiff, Pioneer Mining Company, in this action, and had personal charge of all of its mining affairs and business transacted within the District of Alaska; that during all of the said times herein mentioned, the said plaintiff, Pioneer Mining Company, recognized the title of the defendant, Pacific Coal & Transportation Company, and its lessees in and to the land and premises in controversy in this action, and never at any time during all of said litigation, asserted any claim of title thereto, and never claimed or asserted ownership, possession or title thereto, but at all times recognized the defendant and its laymen as being the owners, in the pos-

session and entitled to the possession of said lands and premises now in controversy; that in the year 1906 the Moonlight Water Company, a corporation, was organized by the then owners thereof, the said Moonlight Springs Water Company a copartnership and thereafter during all the time that the said litigation was pending, the said Moonlight Water Company, a corporation, was a subsidiary corporation organized, managed, operated and owned by the plaintiff, Pioneer Mining Company, and its said principal stockholders and officers, [55] Jafet Lindeberg, Erick O. Lindblom and John Brynteson, were the officers and principal stockholders of the said Moonlight Water Company during all of said time.

## VII.

That by reason of the matters and things above alleged the plaintiff, Pioneer Mining Company, ought not and should not be permitted to now claim or assert ownership or title to the lands and premises in controversy in this action; that by reason of the matters and things herein alleged the plaintiff is estopped from asserting any right, title or interest whatsoever in or to the land and premises in controversy in this action.

WHEREFORE, this answering defendant demands judgment as follows:

1. That the said complaint of plaintiff be dismissed.

2. That it be adjudged and decreed that the defendant, Pacific Coal & Transportation Company, is the owner in fee of the whole of the said Grant



claim, as above described.

3. That it be adjudged and decreed that this answering defendant is the owner of a leasehold estate in the said premises above described, for a term of years as mentioned in the said written lease and written extensions thereof, and that this answering defendant is entitled to the exclusive possession of the whole of said placer claim as above described by metes and bounds.

4. That it be adjudged and decreed that the plaintiff be forever barred and enjoined from asserting any claim, right, title, interest or estate in and to any part or portion of the said "Grant" claim as above described. [56]

5. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of said "Grant" claim as above described.

6. That this answering defendant do have and recover his costs and disbursements in this action.

7. For such other and further relief as may seem meet and proper to the Court.

GEO. B. GRIGSBY and

WILLIAM A. GILMORE,

Attorneys for Answering Defendant, M. D. McCumber.

United States of America,

District of Alaska,—ss.

M. D. McCumber, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action, and the answering defendant herein, that he has heard read the above and foregoing an-

swer, knows the contents thereof and the same is true as he verily believes.

M. D. McCUMBER.

Subscribed and sworn to before me this 4th day of November, A. D. 1911.

[Notarial Seal] WILLIAM A. GILMORE,  
Notary Public in and for the District of Alaska.  
[57]

**Exhibit "A" [to Answer of Defendant M. D. McCumber].**

**MINING CLAIM LEASE.**

THIS INDENTURE, made and entered into this fifteenth day of August, A. D. 1908, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation organized and existing under and by virtue of the laws of the state of Maine, and doing business in the District of Alaska, party of the first part, hereinafter called the lessor, and MENZO D. McCUMBER of Nome, District of Alaska, party of the second part, hereinafter called the lessee;—

WITNESSETH: That the said lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter reserved, and by the said lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee, that certain mine and mining property situate in the Cape Nome Mining and Recording District, District of Alaska, and more particularly described as follows, to wit:—

Bench Claim number one (1) at Western base of

Anvil mountain, also known as and called "MOON-LIGHT" or "GRANT" claim, containing twenty (20) acres, being the same claim located by W. N. Grant, on January 9, 1899, notice of location of which said claim is recorded in the office of the Recorder of the Cape Nome Mining and Recording District, in Book 3, page 59, together with the appurtenances, and rights and privileges to prospect the same for gold, precious metals and minerals, and to mine and extract the same, and reduce the same to any commercial value.

TO HAVE AND TO HOLD, unto the said lessee for the term of three (3) years from the first day of October, A. D. 1908, expiring at noon on the first day of October, A. D. 1911, unless sooner forfeited or determined through the violation of [58] any covenant hereinafter against the said lessee reserved.

And in consideration of the said lease, demise and privileges, the said lessee does hereby covenant and agree with the said lessor, as follows, to wit:

To enter upon said mining claim and premises and work the same mining fashion, in manner necessary to good economical mining, so as to take out the greatest amount of gold, precious metals and minerals possible with due regard to the safety, development and preservation of the said premises as a workable mine.

To work and mine said premises as aforesaid as steadily and continuously from the date of this lease as weather and the season of the year will permit.

To keep all sluices, ditches, drains, waterways and passageways cleared of loose rock and rubbish, and to



do all things necessary to promote the usefulness of said mining property as a workable mine, and to develop the same and do not act thereon during the term of this lease, which would impede mining operations or impair the operating condition of said mining claim, and generally to so conduct operations as to conform to the laws of the United States and the District of Alaska, and the local rules and regulations of miners in said mining district, and to do no act and suffer no default which might in any manner involve the said lessor or its ownership in said mining property, in liability of any kind or character.

To not locate or record said mining property, or allow the same to be recorded by anyone except the said lessor or its agent. To not allow or permit any person or persons, except the said lessee, his agent or workmen, to take or hold possession of said premises, or any part thereof, under any pretense whatever. [59]

To not assign this lease, or any interest thereunder and to not sublet the said premises, or any part thereof, without the written consent of said lessor, or John T. Reed, its agent, in Nome, Alaska.

To pay and deliver to said lessor, as royalty and rent, twenty-five (25) per cent. of all gold, minerals and precious metals to be extracted from said premises during said term, of like assay as that retained by said lessee, at such place as said lessor or its agent shall direct, and to allow said lessor or its agent or representative to be present at each and every cleanup, and to inspect and examine the same.

To deliver up to said lessor the said premises with

the appurtenances and improvements, except machinery, buildings, tools and implements placed thereon by the lessee, to the said lessor in good order and condition, and the mine in all points ready for continued working (accidents not arising from negligence alone excusing) without demand or further notice, on said first day of October, A. D. 1911, at noon, or at any time previous upon demand for forfeiture.

The lessee hereby agrees to do at lease one hundred dollars' worth of work during the year 1908, as assessment work for said year 1908, upon said claim, hereby leased.

The right is hereby reserved by the lessor or its agent or representative, to enter upon and over said property hereby leased, at all reasonable times for the purpose of inspection.

Finally, upon the violation or failure to perform by said lessee, or any person or persons under him, of any covenant or covenants hereinbefore reserved, the term of this lease, and all the rights and privileges thereunder, shall, at the option of said lessor, expire and the same and said premises [60] with the appurtenances shall at once become forfeit to said lessor, and the said lessor or its agent or representative may thereupon, at the demand of possession in writing to be delivered to said lessee, or in his absence by posting said demand in a conspicuous place on said leased premises for the term of three days, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or, at the option of said

lessor, the said lessee and all persons found in occupation may be proceeded against as trespassers from the beginning of said term, both as to realty and the metals and minerals severed therefrom; or as guilty of unlawful detainer.

Each and every clause and covenant of this indenture shall extend to the heirs, executors, administrators and successors of all parties hereto; and to the assigns or successors of said lessor; and as said lessor may elect to the assigns of said lessee.

IN WITNESS WHEREOF, the said parties hereto, lessor and lessee, have hereunto set their hands and seals, to duplicates hereof, the day and year first above written.

PACIFIC COAL & TRANSPORTATION  
COMPANY, [Seal]

(Signed) By "ALBERT MERRILL,"

President,

(Signed) And "ALONZO ELLIOTT,"

Treasurer,

(Signed) "MENZO D. McCUMBER." [Seal]

Signed, sealed and delivered in presence of:

(Signed) "JOHN T. REED,"

As to Menzo D. McCumber. [61]

United States of America,  
District of Alaska,  
Second Division,—ss.

On this fifteenth day of August, A. D. 1908, before me the undersigned, a notary public in and for the District of Alaska, residing at Nome therein, appeared the within named MENZO D. McCUMBER, to me known to be the identical person mentioned in



and who executed the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, the day and year in this certificate first above written.

[Notarial Seal] (Signed) "JOHN T. REED,"  
Notary Public in and for the District of Alaska,  
residing at Nome, Alaska.

State of New Hampshire,  
County Hillsborough,—ss.

On this eleventh day of September, A. D. 1908, before me, the undersigned, a notary public in and for the State of New Hampshire, residing at Manchester, therein, appeared the within named Albert Merrill and Alonzo Elliott, President and Treasurer respectively, of the Pacific Coal & Transportation Company, to me known to be the identical persons mentioned in and who executed the foregoing instrument and acknowledged to me that they executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, the day and year in this certificate first above written.

[Notarial Seal] (Signed) "P. H. SULLIVAN,"  
Notary Public in and for the State of New Hampshire, Residing at Manchester, N. H. [62]

**Exhibit "B" [to Answer of Defendant M. D. McCumber].**

For and in consideration of the sum of one (\$1.00) dollar to the PACIFIC COAL & TRANSPORTA-

TION COMPANY, a corporation, lessor, in the foregoing lease, paid this first day of May, 1909, by MENZO D. McCUMBER, lessee therein, the receipt whereof is hereby acknowledged, and in further consideration of the said Menzo D. McCumber doing at least one hundred (\$100.00) dollars worth of work upon said leased premises during each of the years 1909, 1910, 1911, 1912 and 1913, as assessment work thereon for each of said years, and furnishing said lessor, or John T. Reed, its agent in Alaska, with duly verified proof thereof, the term of the foregoing lease with all its terms and conditions and all the rights and privileges thereunder, save as hereinafter modified is hereby extended for the period of two (2) years from the first day of October, 1911, expiring at noon on the first day of October, 1913, unless sooner forfeited or determined through the violation of any covenant in said lease against the said lessee, M. D. McCumber, reserved.

IT IS HEREBY AGREED, that the said Menzo D. McCumber, lessee in said lease may, if he so desires, cease operations on said mining claim from this first day of May, 1909, until the fifteenth day of November, 1909, on which latter date he shall resume operations on the mining ground and premises mentioned in the foregoing lease, to wit, the "MOONLIGHT" or "GRANT" mining claim, and continue operations thereon according to the terms and conditions of the said lease.

IN WITNESS WHEREOF, the parties hereto, lessor and lessee, have hereunto set their hands and

seals, this first day of May, 1909.

PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, [Seal]

By (Signed) "JOHN T. REED,"

Its Agent in Alaska,

(Signed) "MENZO D. McCUMBER." [Seal]

Signed, sealed and delivered in presence of:

(Signed) "JOHN F. SMITH."

(Signed) "F. J. KOLASH." [63]

**Exhibit "C" [to Answer of Defendant M. D. McCumber].**

### MEMORANDUM OF AGREEMENT.

MEMORANDUM OF AGREEMENT, made and entered into this 28th day of April, 1911, by and between the PACIFIC COAL & TRANSPORTATION COMPANY, a corporation, party of the first part, and MENZO D. McCUMBER, party of the second part, WITNESSETH:

WHEREAS, the party of the first part did on August 15th, 1908, make, execute and deliver unto the party of the second part a certain indenture of lease demising, leasing and letting to said second party all of that certain placer mining claim known as and called BENCH CLAIM No. 1, at the western base of Anvil Mountain, also known as and called MOONLIGHT or GRANT Claim, containing about twenty (20) acres, being the same claim located by W. N. Grant on January 9th, 1899, the certificate of location of said claim being of record in book 3, page 59, and the amended certificate of record in volume 95, page 223, of the Cape Nome Mining & Recording District, District of Alaska, in which said precinct said claim is situated; and



WHEREAS, said party of the first part did extend thereafter, on the first day of May, 1909, by written instrument between the party of the first part and party of the second part, the term of said lease for a period of two (2) years, ending and expiring at noon on the first day of October, 1913; under the terms and conditions of said written lease and said written extension; and

WHEREAS, since said last mentioned date a certain suit has been commenced and is now pending in the District Court for the District of Alaska, Second Division, by the Pioneer Mining Company, a corporation, against both of the [64] parties to this agreement, claiming in said action the ownership of most of the valuable portion of said placer claim above described; and

WHEREAS, said second party hereto represents that he is in possession of and has under his control certain evidence necessary and valuable to the successful defense of the said litigation for the purpose of establishing title to the whole of said claim in the party of the first part hereto; and

WHEREAS, it is the desire and intention of the parties hereto to modify the terms of said written lease and said written extension thereof above mentioned;

NOW, THEREFORE, for and in consideration of the mutual promises herein expressed and other considerations, it is agreed between the parties hereto as follows:

First: That said party of the second part shall secure the services of at least two (2) attorneys to

assist in the preparation for and trial of said case above mentioned, or any other litigation that may arise involving the title to said claim during the lifetime of said lease, at his own expense and cost.

Second: That the party of the second part shall at his own expense and cost seek out and produce at the trial of said cause such testimony, by deposition, documentary evidence or otherwise, as may be within his knowledge or control, or that may hereafter come within his knowledge or control.

Third: That party of the first part agrees that said written lease and written extension thereof above mentioned [65] shall be modified so that the same shall be and remain in full force and effect for a period of three (3) years after the termination of the aforesaid litigation, or after the final termination of the settlement of the title between said Pioneer Mining Company and party of the first part, and free of all litigation that may hereafter arise.

Fourth: That said party of the first part shall and will accept from said lessee, party of the second part, fifteen per cent. (15%) of the gross amount of all gold and gold dust taken and extracted from said claim as royalty from the first forty thousand dollars (\$40,000.00) of gold or gold dust extracted therefrom, and thereafter twenty-five per cent. (25%) of the gross amount of all gold and gold dust taken or extracted from said claim during the lifetime of the lease.

Fifth: That in view of the fact that a vigorous prosecution of mining and mining development on said placer claim at the present time would entail a

large expenditure of money by the lessee and while hampered by litigation and without benefit to the party of the first part, it is hereby agreed that the covenant in said written lease requiring said second party "to work and mine said premises as aforesaid, as steadily and continuously from the date of this lease as weather and the season of the year will permit" is hereby waived by the party of the first part until the termination of the litigation between said Pioneer Mining Company and the party of the first part, and until the said title of the party of the first part to said placer claim is fully settled. That at any time between October 15th and June 1st of each year immediately thereupon said second party shall commence mining operations upon said placer claim and prosecute the same vigorously and in the manner [66] provided in said lease.

Sixth: That in all other respects said lease shall be and remain operative between the parties hereto.

Seventh: This agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

(Signed) PACIFIC COAL & TRANSPORTATION CO. [Seal]

By (Signed) J. ALLISON BRUNER,  
Its Attorney in Fact.

(Signed) MENZO D. McCUMBER. [Seal]

Signed, sealed and delivered in presence of:

(Signed) ELWOOD BRUNER.

(Signed) WILLIAM A. GILMORE.



United States of America,  
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 28th day of April, 1911, personally appeared before me the undersigned notary public in and for the District of Alaska, Menzo D. McCumber, personally known to me to be the person named and described in the foregoing instrument, who executed the same and acknowledged to me that he executed the same for the uses and purposes therein mentioned;

Also at the same time and place appeared J. ALLISON BRUNER, known to me to be the attorney in fact of the Pacific Coal & Transportation Company, a corporation, who executed the foregoing instrument by signing the name of the said Pacific Coal & Transportation Company, a corporation, as principal and his own name thereto as attorney in fact and acknowledged to me that he executed the same as such for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[Notarial Seal]

(Signed) WILLIAM A. GILMORE,  
Notary Public in and for the District of Alaska, Residing at Nome. [67]

Rec'd copy of this amended answer this 4th day of Nov., 1911.

O. D. COCHRAN,  
Of Attys. for Plf.

[Endorsed]: Original. No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. The Pacific Coal & Transportation Company, M. D. McCumber, Defendant. Amended Answer of M. D. McCumber. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 6, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. [68]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION COM-  
PANY, a Corporation, M. D. McCUMBER,  
JOHN DOE and RICHARD ROE,  
Defendants.

**Reply [to Amended Answer of Pacific Coal and  
Transportation Company].**

Now comes the plaintiff above named, and replying to the amended answer of the defendant Pacific Coal and Transportation Company, admits, denies and alleges as follows:

I.

Except as hereinafter admitted or qualified, the plaintiff denies each and every allegation, matter and thing contained in the defendant's first, further,

separate and affirmative answer, and plaintiff especially denies that the premises described in said answer were, on the 9th day of January, 1899, vacant, unappropriated and unoccupied mineral lands belonging to the Government of the United States, and alleges that, on the contrary, the premises described in the complaint were, on the 3d day of January, 1899, appropriated and located as a placer mining claim by one Andrew Jensen the predecessor in interest of said plaintiff, under the mineral land laws of the United States, who then and there performed each and every act required by law to perfect said location, and that thereafter the plaintiff, by mesne conveyances, [69] became the owner of said premises and the successor in interest of said locator, Andrew Jensen; and plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek, covers and embraces a portion of the westerly end of the alleged Grant Claim as described in its answer.

## II.

The plaintiff denies each and every allegation, matter and thing contained in the defendants' second, further separate and affirmative defense.

## III.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's third, further, separate and affirmative defense, except that plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek covers and embraces a portion of the westerly end of



the alleged Grant claim as described in defendant's answer.

IV.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fourth, further, separate and affirmative defense, except the plaintiff admits that it asserts ownership, title and possession to a large portion of the westerly part of the premises described in said answer as the Grant placer claim.

V.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fifth, further, separate and affirmative answer.

VI.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's sixth, further, [70] separate and affirmative answer and defense.

And replying further to said answer and defense, plaintiff alleges:

FIRST: That the defendant Pacific Coal & Transportation Company is a foreign corporation organized under the laws of the State of Maine, and has not, since the year 1907, filed any annual statement with the clerk of the District Court for the District of Alaska, Second Division, and had not, prior to February 8th, 1904, filed with said clerk of said Court an authenticated or other copy of its Charter or Articles of Incorporation, or any statement, as required by Chapter 23, Part 5, of the Civil Code of the District of Alaska; and had not, prior to said last

named date, designated an agent within the District of Alaska or at all, upon whom service of process might be had, as required by said Chapter of the Code of the District of Alaska.

SECOND: That the said defendant Pacific Coal & Transportation Company, have not, since the year 1909, and for more than one year prior to the commencement of this action, had a designated agent resident within the District of Alaska upon whom service of process might be had, as provided for in Chapter 23 part 5 of the Code of the District of Alaska, and have not, during said last named period, had any agent or officer or representative resident within the District of Alaska, or within the District of Alaska, upon whom service of process might be had.

THIRD: That the defendant, Pacific Coal & Transportation Company, claims title to the alleged Grant Placer Mining Claim, from the Corwin Trading Company, a foreign [71] corporation organized under the laws of the State of New Hampshire.

FOURTH: That said Corwin Trading Company has never at any time filed an authenticated copy, or any copy of its Articles of Incorporation or Charter, or any statement or designation of any resident agent, with the clerk of the District Court, Second Division of the District of Alaska, as required by Chapter 23, Part 5, of the Code of the District of Alaska, and has never had any officer or agent upon whom service of process is authorized or might be made, resident within the District of Alaska.

VII.

Further replying to the defendant's seventh, further, separate and affirmative defense and answer, plaintiff denies, admits and alleges as follows:

FIRST: The plaintiff denies each and every allegation, matter and thing in said answer and defense contained, except as hereinafter admitted, qualified or otherwise alleged.

SECOND: The plaintiff admits that the Pioneer Mining Company was organized in 1901; admits that Jafet Lindeberg, John Brynstoneson and E. O. Lindbloom were among the organizers and principal stockholders of said plaintiff Pioneer Mining Company, and that for a long time prior to the organization of said Company they had been mining copartners and were the owners of the lands and premises acquired by the plaintiff at the time of its organization; and the plaintiff further admits that Jafet Lindeberg, since the organization of the plaintiff corporation, has been its president and general manager. [72]

THIRD: That as to the several matters and things contained in the fourth paragraph of said seventh defense and answer, the plaintiff alleges that it has not sufficient knowledge or information to form a belief, and it therefore denies each and every allegation in said paragraph contained.

FOURTH: That as to the several matters and things contained in the fifth, sixth and seventh paragraphs of said seventh defense and answer, the plaintiff denies each and every allegation, matter and thing therein contained, except that plaintiff admits that the actions therein mentioned, were commenced



as therein alleged, and that the legal proceedings had in said actions were had as therein alleged; and the plaintiff further admits that in the year 1906 the Moonlight Water Company was organized.

WHEREFORE plaintiff prays as in the complaint herein.

\_\_\_\_\_,  
\_\_\_\_\_,  
Attorneys for Plaintiff.

United States of America,  
District of Alaska,—ss.

L. Stevenson, being first duly sworn, deposes and says:

That he is the manager of the plaintiff, Pioneer Mining Company, a corporation; that he has read the foregoing reply and knows the contents thereof, and that the same is true as he verily believes.

L. STEVENSON.

Subscribed and sworn to before me this the 11th day of November, 1911.

[Notarial Seal] O. D. COCHRAN,  
Notary Public in and for the District of Alaska.

[73]

Service of a copy of the foregoing Reply this 11th day of Nov., 1911, at 4 P. M., admitted.

ELWOOD BRUNER,  
Attorney for Pacific Coal & T. Co.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Reply to an

Answer P. C. & T. Co. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 11, 1911. John Sundback, Clerk. By \_\_\_\_\_, Deputy. O. D. Cochran and G. J. Lomen, Attorney for Plaintiff. [74]

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*In the District Court for the District of Alaska, Second Division.*

No. 2,245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION COMPANY, a Corporation, M. D. McCUMBER,  
JOHN DOE and RICHARD ROE,  
Defendants.

**Reply [to Amended Answer of M. D. McCumber].**

Now comes the plaintiff above named, and replying to the amended answer of the defendant, M. D. McCumber, admits, denies and alleges as follows:

I.

Except as hereinafter admitted or qualified, the plaintiff denies each and every allegation, matter and thing contained in the defendant's first, further, separate and affirmative answer, and plaintiff especially denies that the premises described in said answer were, on the 9th day of January, 1899, vacant, unappropriated and unoccupied mineral lands belonging to the Government of the United States, and alleges that, on the contrary, the premises described in the complaint were, on the 3d day of January, 1899,

appropriated and located as a placer mining claim by one Andrew Jensen, the predecessor in interest of said plaintiff, under the mineral land laws of the United States, who then and there performed each and every act required by law to perfect said location, and that thereafter the plaintiff, by mesne conveyances, [75] became the owner of said premises and the successor in interest of said locator, Andrew Jensen; and plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek, covers and embraces a portion of the westerly end of the alleged Grant Claim as described in defendant's answer.

## II.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's second, further, separate and affirmative defense.

## III.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's third, further, separate and affirmative defense, except that plaintiff admits that the premises described in its complaint and called Bench No. 1 Moonlight Creek, covers and embraces a portion of the westerly end of the alleged Grant claim as described in defendant's answer.

## IV.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fourth, further, separate and affirmative defense, except the plaintiff admits that it asserts ownership, title and possession to a large portion of the westerly part of



the premises described in said answer as the Grant placer claim.

V.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's fifth, further, [76] separate and affirmative answer.

VI.

The plaintiff denies each and every allegation, matter and thing contained in the defendant's sixth, further, separate and affirmative answer and defense.

And replying further to said answer and defense, plaintiff alleges:

FIRST: That the defendant Pacific Coal & Transportation Company is a foreign corporation organized under the laws of the State of Maine, and has not, since the year 1907, filed any annual statement with the clerk of the District Court for the District of Alaska, Second Division, and had not, prior to February 8th, 1904, filed with said clerk of said court any authenticated or other copy of its charter or Articles of Incorporation, or any statement, as required by Chapter 23, Part 5 of the Civil Code of the District of Alaska; and had not, prior to said last named date, designated an agent within the District of Alaska or at all, upon whom service of process might be had, as required by said Chapter of the Code of the District of Alaska.

SECOND: That the said defendant Pacific Coal & Transportation Company, have not, since the year 1909, and for more than one year prior to the commencement of this action had a designated agent resident within the District of Alaska upon whom service

of process might be had, as provided for in Chapter 23, Part 5 of the Code of the District of Alaska, and have not, during said last named period, had any agent or officer or representative resident within the District of Alaska, or within the District of Alaska, upon whom service of process might be had. [77]

THIRD: That the defendant, Pacific Coal & Transportation Company, claims title to the alleged Grant Placer Mining Claim, from the Corwin Trading Company, a foreign corporation organized under the laws of the State of New Hampshire.

FOURTH: That said Corwin Trading Company has never at any time, filed an authenticated copy, or any copy of its Articles of Incorporation or Charter, or any statement or designation of any resident agent, with the Clerk of the District Court, Second Division of the District of Alaska, as required by Chapter 23, Part 5 of the Code of the District of Alaska, and has never had any officer or agent upon whom service of process is authorized or might be made, resident within the District of Alaska.

## VII.

Further replying to the defendant's seventh, further separate and affirmative defense and answer, plaintiff denies, admits and alleges as follows:

FIRST: The plaintiff denies each and every allegation, matter and thing in said answer and defense contained, except as hereinafter admitted, qualified or otherwise alleged.

SECOND: The plaintiff admits that the Pioneer Mining Company was organized in 1901; admits that Jafet Lindeberg, John Bryntsen and E. O. Lind-

bloom were among the organizers and principal stockholders of said plaintiff Pioneer Mining Company, and that for a long time prior to the organization of said company, they had been mining copartners and were the owners of the lands and premises acquired by the plaintiff at the time of its organization; and the plaintiff further admits that Jafet Lindeberg, since the [78] organization of the plaintiff corporation, has been its president and general manager.

THIRD: That as to the several matters and things contained in the fourth paragraph of said seventh defense and answer, the plaintiff alleges that it has not sufficient knowledge or information to form a belief, and it therefore denies each and every allegation in said paragraph contained.

FOURTH: That as to the several matters and things contained in the fifth, sixth and seventh paragraphs of said seventh defense and answer, the plaintiff denies each and every allegation, matter and thing therein contained, except that plaintiff admits that the actions therein mentioned, were commenced as therein alleged, and that the legal proceedings had in said actions were had as therein alleged; and the plaintiff further admits that in the year 1906 the Moonlight Water Company was organized.

WHEREFORE plaintiff prays as in the complaint herein.

\_\_\_\_\_,  
\_\_\_\_\_,  
Attorneys for Plaintiff. [79]



United States of America,  
District of Alaska,—ss.

L. Stevenson, being first duly sworn, deposes and says:

That he is the Manager of the plaintiff, Pioneer Mining Company, a corporation; that he has read the foregoing reply and knows the contents thereof and that the same is true as he verily believes.

L. STEVENSON.

Subscribed and sworn to before me this the 11th day of November, 1911.

[Notarial Seal] O. D. COCHRAN,  
Notary Public in and for the District of Alaska.

Service of a copy of the foregoing Reply this 11 day of Nov., 1911, at — M., admitted.

WILLIAM A. GILMORE,  
Of Attorney for Def. M. D. McCumber.

[Endorsed]: No. 2,245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Reply to Am. Answer M. D. McCumber. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 11, 1911. John Sundback, Clerk. By ———, Deputy. O. D. Cochran and G. J. Lomen, Attorneys for Plaintiff. [80]

*In the District Court for the District of Alaska, Second Division.*

THE PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

Plaintiff,

vs.

THE PACIFIC COAL AND TRANSPORTATION COMPANY, a Corporation, and M. D. McCUMBER,  
Defendants.

Defendants.

**Opinion.**

O. D. COCHRAN, G. J. LOMEN and GEO. D. SCHOFIELD, Attorneys for Plaintiff.

ELWOOD BRUNER, Attorney for Defendant Pacific Coal and Transportation Company.

WILLIAM A. GILMORE and GEORGE B. GRIGSBY, Attorneys for Defendant M. D. McCumber.

Plaintiff brings this action under section 475 of the Alaska Code setting up title by virtue of a placer mining location made on the third day of January, 1899, in the Cape Nome Recording District, District of Alaska, and known as Bench No. 1 Moonlight Creek, near Moonlight Springs, and giving a surveyed description by metes and bounds, courses and distances, and claiming to be in the possession of said mining claim and that defendants, and each of them, claim an estate and interest in said premises adverse to plaintiff, the extent and nature of which adverse claims are to plaintiff unknown, and that said adverse claims are without right; that the value of the

property is ten thousand dollars, and prays judgment that the defendants be decreed to have no estate or interest whatever in said premises, or any part thereof, and that the title of plaintiff be decreed good and valid and that the defendants be [81] forever enjoined and restrained from asserting any claim whatsoever in and to said placer claim adverse to plaintiff, and for general equitable relief.

To this complaint the defendant Pacific Coal and Transportation Company and the defendant M. D. McCumber have answered separately, their answers being identical except that the defendant McCumber is alleged to be the lessee of the defendant Pacific Coal and Transportation Company. Both answers deny all the material allegations of the complaint and especially deny the possession of the plaintiff. Then follow seven separate and affirmative defenses.

The first affirmative defense alleges, among other things, that the defendant Pacific Coal and Transportation Company is the owner of the Moonlight or Grant claim alleged to have been located on the 9th day of January, 1899, describing it by metes and bounds according to survey; sets up the tenancy of McCumber under a lease dated this fifth day of August, 1908; also alleges that the placer mining claim described in paragraph 4 of plaintiff's complaint as No. 1 Bench Moonlight Creek, near Moonlight Springs, covers and embraces an overlap of a large portion of the westerly end of the Grant claim as described by defendants, and alleges that the exact boundaries and limitations claimed by the said plaintiff are unknown to the said answering defendants



and that the said plaintiff has no right, title, interest or estate in and to the said part or portion so claimed by the said defendants under said Grant claim, but wrongfully, unlawfully and without right assert title and ownership thereto, and the said defendants then again allege that they are in possession of said overlap and said Grant claim.

In the second affirmative defense defendants allege ownership of the said Grant claim and that their grantors and predecessors in interest have been in the uninterrupted, notorious and exclusive possession of the whole of said Grant claim under color and claim of title by reason of said Grant location ever since the ninth day of January, 1899. [82]

The third affirmative defense in substance is that the defendants were in the exclusive possession of the whole of the Grant claim including the ground in controversy on the date when plaintiff commenced this cause of action, to wit, the seventh day of November, 1910.

The fourth affirmative defense alleges ownership in the defendants by reason of the Grant location made on the ninth day of January, 1899, describing the premises by metes and bounds; the transfer by mesne conveyances to the defendant Pacific Coal and Transportation Company; that plaintiff asserts ownership, title and possession to a large portion of the westerly part of the Grant claim as described in paragraph 4 of plaintiff's complaint; that plaintiff ought not to be permitted to allege and assert that it is the owner and entitled to the possession of said part of said Grant claim, or any part thereof "because

that ever since the ninth day of January, 1899, this answering defendant, the Pacific Coal and Transportation Company, its predecessors and grantors, were the owners of the said Grant claim as above described by metes and bounds and in the exclusive possession thereof, and entitled to such exclusive possession, and because that ever since said 9th day of January, 1899, the defendant, the Pacific Coal and Transportation Company, its grantors and predecessors in interest, were, have been and now are, in the uninterrupted, open, adverse and notorious possession of the whole of said Grant placer claim and the conflict area thereof, and have been engaged for more than seven (7) years last past in operating, mining and developing the said premises and particularly the part in controversy in this action, with full knowledge and notice on the part of said plaintiff, and without any objection, interruption or complaint on its behalf; that the defendant, Pacific Coal and Transportation Company, and its lessees have expended large sums of money in mining, prospecting and developing the said area in conflict of said Grant claim, without objection or complaint of, from or on behalf of said plaintiff, [83] and with its full knowledge, ever since the location thereof, on January 9th, 1899."

The fifth affirmative defense alleges that at all times mentioned in plaintiff's complaint the defendant Pacific Coal and Transportation Company, its grantors and predecessors in interest, were in the actual, open, exclusive, notorious and uninterrupted possession of the premises in dispute.

The sixth affirmative defense alleges that plain-

tiff's cause of action was barred by the provisions of Sections 3 and 4 of Chapter 2, Part V, of the Civil Code of Alaska, and by virtue of Section 361, Chapter 38, Part IV, of the Civil Code of Alaska.

The seventh affirmative defense recites the history of certain litigation conducted in the District Court for this Division between the Moonlight Springs Water Company, plaintiff, vs. George Doverspike et al., defendants, whereby the Moonlight Springs Water Company sought to enjoin Doverspike et al., from polluting the waters of Moonlight Springs, and alleges that by reason of the matters and things alleged in said affirmative defense the plaintiff is estopped from asserting title to the premises in controversy.

The said defendants then pray judgment as follows:

“1. That the said complaint of plaintiff be dismissed.

2. That it be adjudged and decreed that the defendant, Pacific Coal and Transportation Company, is the owner in fee of the whole of said Grant claim, as above described.

3. That it be adjudged and decreed that the title to the ground in controversy be quieted and confirmed in this answering defendant, subject to the leasehold estate of the defendant, M. D. McCumber.

4. That it be decreed and adjudged that the plaintiff has no claim, estate, interest or demand in or to any part or portion of the said “Grant” claim as above described.

5. That it be adjudged and decreed that the plain-



tiff be forever barred and enjoined from asserting any claim, right, [84] title, interest or estate in or to any part or portion of the said "Grant" claim as above described.

6. That this answering defendant do have and recover its costs and disbursements in this action.

7. For such other and further relief as may seem meet and proper to the Court."

To the amended answers plaintiff filed separate replies denying all the allegations of the first affirmative defense except that the premises described in its complaint and called Bench No. 1 Moonlight Creek covers and embraces a portion of the westerly end of the alleged Grant claim as described in defendants' answers, and denies all of the material allegations of the several affirmative defenses except that it admits certain affirmative allegations contained in the seventh affirmative defense, and prays as in the complaint.

It will be seen from the statement of the pleadings that Bench No. 1 on Moonlight Creek, the location under which plaintiff claims, was made on the third day of January, 1899, and that the Grant location, under which defendants claim, was made on the ninth day of January, 1899; that plaintiff's location is prior in point of time appears from the pleadings and was not controverted during the trial. Plaintiff's location being prior in point of time, if when made included the ground in controversy, the defendants' location in so far as it conflicted would be absolutely void. The testimony shows that when the Grant location was made but one stake was

erected, and neither the exact date when the other stakes were placed upon the ground marking the boundaries nor the person by whom they were erected appears in the record. Three of the stakes, namely, the southeast, southwest, and northwest corners, of Bench No. 1 Moonlight Creek, plaintiff's claim, were established in their present position as the place where they originally stood on January 3, 1899, by testimony clear and convincing even beyond a [85] reasonable doubt. Near the southeast corner stake is a small prospect hole dug by Mrs. Jorgenson in 1899 which was identified by several witnesses who were in a position to know and whose testimony has not been contradicted in any particular. In fact, there is no testimony in the record which directly or indirectly places the position of the three stakes mentioned at any time in any other place than that they now occupy. The original position of the northeast corner stake was not so definitely located but any variance of a few feet that might occur with reference to that corner could not materially affect the rights of the defendants. A discovery having been proven, the boundaries marked so that they can be readily traced, and a location notice placed on record, the conclusion cannot be avoided that No. 1 Bench was a valid location on the 3d day of January, 1899, and that the ground embraced within its boundaries was then segregated from the public domain. That being true, if defendants recover in this action it must be by reason of some of the defenses other than their first affirmative defense.

We will first consider the fourth affirmative de-



fense together with the seventh affirmative defense, both being pleaded by way of estoppel. In order to constitute an estoppel there must exist a false representation or concealment of material facts. It must have been made with knowledge, actual or constructive, of the facts. The party to whom it was made must have been without knowledge or the means of knowledge of the real facts. It must have been made with intention that it should be acted upon and the party to whom it was made must have relied upon or acted upon it to his prejudice. The party relying upon an estoppel must not only have acted in reliance upon the conduct or representations of the parties sought to be estopped but must be destitute of knowledge of the real facts himself and have been without convenient or ready means of acquiring such knowledge. Where the truth is known to both parties or where both have equal means of knowledge there can [86] be no estoppel. All the testimony introduced by defendants under these defenses was received over the objection of plaintiff that an estoppel had not been properly or sufficiently plead, the Court reserving a ruling on the sufficiency of the pleadings until final judgment, and it is the opinion of the Court that in neither instance have the essential elements of an estoppel been plead. However that may be, and considering the pleadings as sufficient, it is certain that there was no testimony to sustain a single element of an estoppel in pais or by record. There is no contention that there was a false representation made by plaintiff or a concealment of any material fact. It is admitted by the



defendant McCumber that he knew of the existence of the conflict and that the southeast corner stake of Bench No. 1 Moonlight Creek stood within a few feet of his cabin. The records were open to him. He was advised of the conflict by a surveyor and if he was ignorant of the true condition it was because he closed his eyes and refused to hear. The stakes which now stand upon the ground were placed there by a surveyor in 1902 and all that time have been so marked that any person who desired to do so could readily ascertain to what claim they belonged and by them trace the boundaries. Each successive representative of the Pacific Coal and Transportation Company appears to have been well aware of the conflict, the testimony of Mr. Bard showing that while he was acting in that capacity he was notified by representatives of plaintiff, Pioneer Mining Company, at which time he alleges he threw the representative off the premises and ordered him not to return. Under such a state of the pleadings and evidence it would be a waste of time to go extensively into the law of estoppel.

The third affirmative defense alleges that on the 7th day of November, 1910, the date upon which plaintiff instituted this suit, the defendants were in possession of the ground in controversy and that the plaintiff, Pioneer Mining Company, was not in possession of the conflict area or any part thereof, and has no right to maintain [87] this action in equity, being, as they contend, a plea to the jurisdiction of the Court to try the cause sitting as a court of equity. Before taking up the law on this phase of the case

it might be well to briefly revert to the facts. First, the undisputed facts as they appear in the evidence are that the plaintiff had for several years prior to the commencement of this action maintained upon the ground in controversy a large ditch and also a nest of penstocks, from which ditch and penstocks have been constructed at least six pipe-lines varying in size from 10 or 12 to 30 inches and extending over and across the area in conflict, said pipe-lines having been used since the year 1905 in conveying water to plaintiff's various mining operations in the immediate vicinity, a portion of the water so conveyed being applied upon the lower or westerly end of Bench Claim No. 1 during the past two or three years prior to the commencement of this action in conducting extensive mining operations upon Bench Claim No. 1; that during each year since the construction of said penstocks and pipe-lines plaintiff has expended from \$800.00 to \$1200.00 in repairs and improvements and cleaning of the pipe-lines upon the ground in controversy; that during the summer of 1910 from about the 12th of May to the 27th of October the defendants were not in the actual possession or engaged in mining upon the Grant claim nor the ground in controversy, during which time plaintiff was carrying on extensive mining operations on Bench Claim No. 1 by hydraulic process, and that on the 7th day of November, 1910, the date of commencement of this action, two employees of the plaintiff were engaged in mining upon said Bench Claim No. 1. Thus far there is no dispute. It is contended however that some days prior to the 7th day of No-



vember, 1910, the defendants resumed their actual possession and began preparations for active mining upon the ground in controversy. This contention is supported by the testimony of Adolph Meyer which is flatly contradicted by the testimony of three witnesses for plaintiff besides the expert testimony of Mr. Gibson showing climatic conditions as [88] to the fall of snow, etc., which makes it appear at least possible that Mr. Meyer was mistaken in the month. It would therefore seem that the preponderance of the evidence upon this disputed point is in favor of the plaintiff. This statement of the facts is not necessary for a decision of the point raised by this plea and is simply inserted as a guide in the preparation of findings of fact and conclusions of law in conformity with this opinion.

Under the law defendants having set up a title in themselves by virtue of a valid location of the ground in controversy, alleging their possession and praying that their title be quieted as against the plaintiff, and having introduced testimony in support of that plea and insisted upon their right to such a decree up to this present moment, even in their written briefs, have waived their plea as to the jurisdiction of this Court. They cannot be permitted to assume such inconsistent positions. They in effect contend that if the Court finds in their favor it has ample jurisdiction to do so, but if it finds against them it is without jurisdiction. Defendants' contention that they have the right to set up all the defenses which they may have and rely upon any or all of them is undoubtedly sustained by the weight of authority as



laid down in Bliss on Code Pleading cited by defendants, but that refers to defenses and not to cross-bills or counterclaims.

The Supreme Court of Oregon however has taken a different view from perhaps the majority of the Code States, holding in an unbroken line of decisions that a plea in abatement while it may be interposed in the same answer with other defenses and that it is not necessary that it be labeled a plea in abatement, yet it must be disposed of before proceeding to a trial upon the merits. We having adopted in our Code the laws of Oregon may be bound by those decisions but it is unnecessary for this Court to pass upon that particular point of procedure at this time for the reason that that is not the question involved in this case.

Judge Baker of the Circuit Court of Appeals, Seventh [89] Circuit, in the case of Sanders vs. The Village of Riverside, 118 Fed. 720, lays down the rule which must govern in this case in the following language:

“The village thus selected its own tribunal,—one competent to pass upon the conflicting claims of title,—and thereafter could not be permitted to assert that its adversary should have resorted to a court of law. And for the village it may be said that, on the coming in of the master’s report, it did not challenge the jurisdiction of the Court to decide the merits of the exceptions presented to Mr. Sanders. The Court, so far as the record discloses, of its own motion dismissed the case, the cause and the cross-cause, at this stage of the proceedings. But the present contention

of the village in support of the Court's action apparently comes to this: If the tribunal of its own selection found that the village had title to the whole, the case would be a suit in equity; but, if Mr. Sanders were found to have title to any part, the case would be an action at law. This sounds very like the urchin's proposition to match coppers on the basis of, 'Heads, I win; tails, you lose.' "

In 32 Cyc., page 1367, the author lays down the following general proposition:

"But if the defendant in the ordinary statutory action to determine adverse claims alleges title in himself and demands affirmative relief against plaintiff it is not necessary for plaintiff to prove the allegation that the land is vacant and unoccupied or that he is in possession, as the case may be"; citing *Kipp vs. Hagman*, 73 Minn. 5; *Hooper vs. Henry*, 31 Minn. 264, and other cases.

To the same effect are the following cases:

*O. C. M. Co. vs. Abbott*, 167 Fed. 682.

*Hopwood vs. Patterson*, 2 Oreg. 50.

*State vs. Blize*, 37 Oreg. 408.

*O'Hara vs. Parker*, 27 Oreg. 172. [90]

Counsel for defendants very earnestly insisted that plaintiff is guilty of such laches as should bar its recovery in this action. Laches is such negligence as results in the omission to do what one is by law required to do to save a right, and which warrants a presumption that the claimant of it has abandoned it and declines to assert it. When an assertion of the right is neglected or omitted for a period of time

more or less great and under such circumstances as to cause prejudice to an adverse party, it may operate as a bar in equity. Although a proper ingredient in the law of laches the instances seem to be rather where courts have declared that mere lapse of time might effect a positive bar, even in cases of purely equitable jurisdiction; the defense of laches is in equity only permitted to defeat an acknowledged right on the ground that it affords evidence that the right has been abandoned. Delay alone is not the sole and controlling factor that constitutes laches. If it were so some period fixed by statute would afford a safe and unvarying rule.

Hamilton vs. Dooley, 49 Pac. 769.

Cottrell vs. Watkins, 17 S. E. 328, 19 L. R. A. 754.

Ripley vs. Seligman, 50 N. W. 143.

Babb vs. Sullivan, 21 S. E. 277.

From the foregoing authorities it will be seen that one of the controlling features in laches is such conduct as would lead the Court to believe that the party against whom it is to be enforced has abandoned his right, and where a party is asserting his right and another with full knowledge of his claim deliberately or negligently trespasses upon that right, no matter how frequent the trespasses and even though considerable sums of money were expended while thus trespassing, the trespasser acting at all times not in ignorance of the true title but in opposition to it, does not so appeal to the conscience of the chancellor as to cause a court of equity to invoke the doctrine of laches. In addition to this position the authorities



seem to be quite unanimous that in this character of [90½] actions laches is never a proper defense.

Quoting from section 33, Vol. I, Book V, Pomeroy's Equity Jurisprudence:

“A party in possession of land who resorts to a court of equity to settle a question of title is not chargeable with laches no matter how long his delay. Such a party is at liberty to wait until his title is attacked before he is obliged to act. The most frequent illustrations of this principle are found in suits by parties in possession to remove a cloud on title or to quiet title. Where, however, statutes permit such suits by parties out of possession, the doctrine of laches does apply if the plaintiff is not in possession”; citing in support of the text:

Simmons Creek Coal Co. vs. Doran, 142 U. S. 417.

Thompson vs. Dumas, 85 Fed. 517 (29 C. C. A. 312).

Messenburg vs. Denison, 18 C. C. A. 280.

Gunnison Gas & Water Co. vs. Whitaker, 91 Fed. 191.

Shaw vs. Allen, 184 Ill. 77.

Gordon vs. Johnson, 186 Ill. 18.

Hayes vs. Carroll, 74 Minn. 134.

Cook vs. Lasher, 19 C. C. A. 654.

Hensel vs. Kegans, 28 S. W. 705.

Jackson vs. Boyd, 87 S. W. 121.

Weir vs. Cordy-Fisher Lumber Co., 85 S. W. 341.

Walgren vs. Harvey, 54 W. Va. 608.

The next question demanding the consideration of the Court is the plea of the statute of limitations interposed by defendants. This question has been definitely settled in the case of Tyee Mining Co. vs. Langstedt, 136 Fed. 124, and Tyee Mining Co. vs. Jennings, 137 Fed. 864. These decisions are binding upon this Court and the mere citation of them is all that is necessary to dispose of this question, and if it were not for the very earnest and able contention of counsel for defendants this Court would not [91] consider the subject further. In view of the fact that in the Tyee case the Circuit Court of Appeals referred to the Oregon cases of Altschul vs. O'Neill, Altschul vs. Clark, and other Oregon decisions which had been rendered prior to the adoption of our Code, and by our having adopted the Oregon laws presumably adopted the Oregon decisions, counsel for defendants contend that the Circuit Court of Appeals gave controlling weight to the Oregon decisions in the Tyee case. Since the rendition of the opinion in the Tyee case the case of Boe vs. Arnold, reported in 102 Pac. 290, recedes from and overrules the Altschul vs. O'Neill and other Oregon cases, and it is for the purpose of examining to what extent the case of Boe vs. Arnold affects the question that the Court deems it advisable to review some of the authorities.

Defendants' contention that the case of Boe vs. Arnold, *supra*, is in direct opposition to the case of Tyee vs. Langstedt, *supra*, is not borne out by a careful study of the cases. In Boe vs. Arnold the

Supreme Court of Oregon uses the following language:

“The latest decisions of the Supreme Court of the United States rendered in cases having many features similar to the case at bar ought of themselves in our judgment to justify this Court in overruling and receding from the doctrine enunciated in *Altschul vs. O’Neill*, *Altschul vs. Clark and Beale vs. Hite*, so far as they conflict with the views herein announced. *Missouri Land Co. vs. Weise*, 208 U. S. 234; *Missouri Land Co. vs. Wrich*, 208 U. S. 250; *Iowa R. R. Co. vs. Blumer*, 206 U. S. 482.”

A careful consideration of the case of *Boe vs. Arnold* will show that the Court decided the case first upon the question of estoppel and simply receded from the erroneous position taken by that Court in prior decisions where it held that until patent had issued there could be no adverse possession even under a grant *in praesenti*, so long as the party in possession recognized the title in the United States. The United States cases cited and relied [92] upon in this decision very clearly show that the case of *Boe vs. Arnold* does not conflict in any way with the *Tyee* case.

We quote from the *Missouri Land Co. vs. Wiese*, 208 U. S. 294:

“Plaintiff in error set up and claimed by its answer and cross-bill that the title to its interest remained in the United States until the issuance of patent in 1893. In other words, that the grant from the Sioux City branch was not a



grant of the legal title *in praesenti*. \* \* \*

The case was submitted to the Court on the pleadings and evidence and a decree was entered adjudging that Wiese had a perfect title to the tract. The Supreme Court of Nebraska affirmed the decree (108 N. W. 175) holding in substance that the grant to the two companies of the tract in controversy was *in praesenti*; that the title of the companies attached upon the definite location of their lines of road, and that the adverse possession of Wiese and his grantor commencing in 1882 had completely barred any claim of the companies to the property. \* \* \*

That the decision of the Court below was right, as applied to the land within the place limits of the main line grant made to the Union Pacific Railroad Company by the Act of 1862 and the Amendatory Act of 1864, is not an open question. This is so since it has been expressly held that the main line grant was one *in praesenti*. \* \* \*

But when the grant is not *in praesenti*, and nothing remains to be done for the administration of the grant in the Land Department and the conditions of the grant had been complied with and the grant fully earned, as in this case, notwithstanding want of final certificate and the issuance of patent, the railroad company had such title as would enable it to maintain ejectment against one wrongfully on the lands, and title by prescription would run against it in favor of one in adverse possession under color of title."

The authorities of counsel for defendants were directed largely to the combating of an erroneous position taken by counsel [93] for plaintiff following the early decisions of Oregon, and in their argument lost sight of the fact that it was not so much a question as to whether or not the party in adverse possession was holding as against the world including the United States Government, as it is a question whether or not the title actually remained in the Government during the period of adverse possession. The mere ministerial act of issuing patent is not controlling, it being simply written evidence of title.

The case of *Redfield vs. Parks*, 132 U. S. 244, very clearly states the reason for the rule adopted and consistently followed for a great number of years down to the present time by the Supreme Court of the United States:

“That the possession of the defendants does not bar the plaintiff’s action is a point too clear to admit of much controversy. It is a well-settled principle that the statute of limitations does not run against a State. If a contrary rule were sanctioned, it would only be necessary for intruders upon the public lands to maintain their possessions, until the statute of limitations shall run; and then they would become invested with the title against the Government, and all persons claiming under it. In this way the public domain would soon be appropriated by adventurers. Indeed, it would be utterly impracticable, by the use of any power within the reach of the

Government, to prevent this result. It is only necessary, therefore, to state the case in order to show the wisdom and propriety of the rule that the statute never operates against the Government. The title under which the plaintiff in ejectment claimed emanated from the Government in 1824. Until this time there was no title adverse to the claim of the defendants; there can, therefore, be no bar to the plaintiff's action."

Take the case at bar, plaintiff's location being a prior and valid location, defendants' location in conflict was void as to the conflict area and of no force or effect. Had plaintiff continued to do the annual assessment work upon this property [94] outside of the conflict area for a period of eight or nine years, and during all that period the defendants had remained in the actual, open, notorious, adverse possession of the tract in conflict, but before the statutory period had expired plaintiffs forfeited their location by failing to do the annual assessment work, it is very clear that the area in conflict would revert to the public domain, and that the first person connecting himself with the Government title by taking the necessary steps to make a valid location would be entitled to the grant from the Government, and defendants could not set up their adverse possession as against such a subsequent locator. There is not much merit in counsel's contention that we are bound by the decision of the Oregon court in *Boe vs. Arnold* for the simple reason that that decision was rendered subsequent to the



adoption of the laws in the Alaska Code. While we may have adopted the former decisions we are no more bound by subsequent decisions than we are of any other State. It would be very presumptuous on the part of this court in any event to follow the decision of the Supreme Court of the State of Oregon as against the decisions of the Circuit Court of Appeals in the Tyee cases, notwithstanding counsel's prediction that the Circuit Court of Appeals will recede from its decisions in those cases and follow the Oregon case. If counsel for defendants have cited any authority from the Federal Courts holding that there could be an adverse possession where the title still remained in the Government it has escaped the notice of the court, except perhaps where all the steps necessary to be taken had been performed by the entryman and final receipt had issued and only the ministerial act of issuing patent remained. In such a case there could be no forfeiture or abandonment on the part of the entryman and no reason for following a different rule.

This disposes of all of the contentions made by counsel for defendants so far as this court is concerned, and it is the wish of the court that defendants appeal their case to the proper tribunal to correct any errors that may have occurred during the [95] trial. Let findings of fact and conclusions of law be prepared in conformity with this opinion.

CORNELIUS D. MURANE.

Nome, Alaska, February 5th, 1912.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer

Mining Co., Plaintiff, vs. The Pacific Coal and Transportation Co. et. al., Defendants. Opinion. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Feb. 5, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [96]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, M. D. McCUMBER,  
Defendants.

**Defendants' Proposed Bill of Exceptions No. 1.**

BE IT REMEMBERED that on the 12th day of May, 1911, the defendant M. D. McCumber, served upon the plaintiff, and filed his written motion requesting an order of the above-entitled court to assign the above-entitled action to the jury calendar; and be it further remembered that thereafter on the 15th day of May, 1911, the defendant, Pacific Coal & Transportation Company, filed its written motion also requesting the above-entitled court to assign the said action to the jury calendar, which said written motions of the said defendants were as follows:

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Motion [97] [to Assign Case on Jury Trial Calen-  
dar, etc.].**

Comes now the defendant, M. D. McCumber, and moves the Court for an order assigning the above-entitled action on the jury trial calendar and fixing the date of trial of said action.

This motion is based upon the affidavit of the defendant, M. D. McCumber, served and filed herewith, and upon all the records and files in the above-entitled action.

Dated at Nome, Alaska, this 12th day of May, 1911.

GEORGE B. GRIGSBY,  
ELWOOD BRUNER, and  
WILLIAM A. GILMORE,  
Attorneys for Defendant M. D. McCumber.



*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Motion [for Order Assigning Case on Jury Calen-  
dar].**

Comes now the defendant, Pacific Coal & Transportation Company, and moves the Court for an order assigning the above-entitled action on the jury calendar and fixing the date of trial of said action.

This motion is based upon all the records and files in the above-entitled action.

Dated at Nome, Alaska, this 15th day of May, 1911.

J. ALLISON BRUNER,  
Attorney for Defendant Pacific Coal & Transportation Co. [98]

And be it further remembered that on the 12th day of May, 1911, the defendant, M. D. McCumber, filed his affidavit in support of the said motion, which said affidavit was in words and figures as follows:

**[Affidavit of M. D. McCumber in Support of Motion  
for Order Assigning on Jury Calendar].**

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

United States of America,  
District of Alaska,—ss.

M. D. McCumber, being first duly sworn, deposes  
and says:

That he is one of the defendants in the above-  
entitled action; that the above-entitled action is now  
at issue between affiant and the plaintiff and is ready  
for trial; that affiant is in possession of the ground  
in controversy and is engaged in mining thereon, and  
is anxious to have the said case brought to trial;  
that the trial of said action will determine the right  
of possession of the ground in controversy; that  
affiant is anxious to have a jury trial of the above-  
entitled action, and to have the issues presented by  
the pleadings decided by a jury, and therefore prays  
the Court to set and assign the said cause for trial  
on the jury calendar and to [99] fix the date for  
the trial thereof at as early a date as possible.

M. D. McCUMBER.

Subscribed and sworn to before me this 12th day of May, 1911.

[Seal] WILLIAM A. GILMORE,  
Notary Public in and for the District of Alaska.

And be it further remembered that thereafter the said motion came on regularly for hearing before the above-entitled court on the 20th day of May, 1911, the plaintiff appearing by its attorneys of record, and the defendants being represented by their attorneys of record, and after argument, the said motion was submitted to the Court and by the Court taken under advisement and thereafter on the 27th day of May, 1911, the Court rendered its opinion in writing denying the motions of the defendants, to which rulings of the Court the defendants then and there excepted, which said exceptions were allowed by the Court.

BE IT REMEMBERED that thereafter on the 29th day of May, 1911, the defendants filed their written notice and motion requesting the Court to enter an order directing that certain issues of fact raised by the pleadings be submitted to a jury for inquiry and determination, which said notice and motion were in words and figures as follows:



*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Notice [100] [of Motion for Order to Submit Cer-  
tain Questions to Jury, etc.].**

To the Pioneer Mining Company, a Corporation,  
and to O. D. Cochran, Esq., and G. J. Lomen,  
Esq., Attorneys of Said Company:

You and each of you will please take notice that the defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, will on Saturday, the third day of June, A. D. 1911, at the hour of ten o'clock on said day, or as soon thereafter as counsel can be heard, call up for hearing their motion, made, served and filed herewith, in the above-entitled action, for an order of the above-entitled court submitting certain issues to the inquiry and determination of a jury, as prayed for in said motion.

Dated at Nome, Alaska, this 29th day of May, 1911.

GEO. B. GRIGSBY,  
ELWOOD BRUNER, and  
WILLIAM A. GILMORE,  
Attorneys for M. D. McCumber.  
J. ALLISON BRUNER,

Attorney for Pacific Coal & Transportation Company.

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Motion [to Submit Certain Questions, etc., to Jury].**

Come now defendants, Pacific Coal & Transportation Company, a corporation and M. D. McCumber, by and through [101] their respective attorneys and move the Court for an order directing that certain issues of fact raised by the pleadings in the above-entitled action, a copy of which said proposed issues are served and filed herewith, be submitted to a jury for inquiry and determination and that the Court by its proper order, submit the said issues to a jury for determination.

This motion is made and based under the provisions of section 371, Chapter 39, of the Alaska Civil Code.

This motion is made and based upon all of the records, files and pleadings in the above-entitled action.

Dated at Nome, Alaska, this 29th day of May, 1911.

GEO. B. GRIGSBY,  
ELWOOD BRUNER, and  
WILLIAM A. GILMORE,  
Attorneys for M. D. McCumber.  
J. ALLISON BRUNER,

Attorney for Pacific Coal & Transportation Co.

And be it further remembered that on the said 29th day of May, 1911, the defendants served upon the plaintiff, and filed a proposed statement of issues of fact to be submitted to a jury by the Court, which said statement of issues of fact were in words and figures as follows:

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants. [102]



**Proposed Statement of Issues of Fact to be  
Submitted to a Jury by the Court.**

Defendants Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, pray the Court to submit the following statement of issues of fact to a jury for determination:

1. Was a valid location of the premises in controversy made by plaintiff, or its predecessors in interest?

2. Was a valid location of the premises in controversy made by the defendants or their predecessors in interest?

3. If from the evidence you find that the plaintiff and its predecessors in interest made a valid location of the claim known as Bench Claim No. One (1) Moonlight Creek, did said placer location include within its exterior boundaries the ground in controversy in this action?

4. Were the defendants in actual possession of the ground in controversy and described by them in their answers, at the date of the commencement of this action, to wit: the seventh day of November, 1910?

5. Were the defendants and their predecessors in interest in the uninterrupted, adverse and notorious possession of the ground in controversy in this action under color and claim of title, for seven years or more immediately prior to the Seventh day of November, 1910, the date upon which this action was commenced?

Dated at Nome, Alaska, this 29th day of May, A. D. 1911.

GEO. B. GRIGSBY,  
ELWOOD BRUNER, and  
WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.

J. ALLISON BRUNER,

Attorney for Defendant Pacific Coal & Transportation Co. [103]

And be it further remembered that thereafter on the 17th day of June, 1911, the said motion came on regularly for hearing before the above-entitled court, the plaintiff being represented by its attorneys of record and the defendants being represented by their attorneys of record, and the Court after argument upon the said motion, rendered its decision denying the said motion, to which ruling of the Court the defendants then and there excepted and the said exception was allowed by the Court.

And now in furtherance of justice and that right may be done, the defendants present the foregoing proposed bill of exceptions No. 1, and pray that the same may be settled, allowed, signed and certified by the Court, as allowed by law.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY, and  
WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.

The foregoing proposed bill of exceptions having been served, filed and presented, as required by law,

and being full, true and correct, is hereby settled and allowed.

Done in open Court this 30th day of December, 1911.

CORNELIUS D. MURANE,  
District Judge.

Service of the above and foregoing proposed bill of exceptions acknowledged by receipt of a copy this 10th day of November, 1911.

O. D. COCHRAN,  
Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Company, M. D. McCumber et al., Defendants. Defendants' Proposed Bill of Exceptions No. 1. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 10, 1911. John Sundback, Clerk. By ———, Deputy. C. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. Vol. 9, Orders and Judgments, p. 231. C.

Refiled in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 30, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. [104]



*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Defendants' Proposed Bill of Exceptions No. 2.**

BE IT REMEMBERED that on the 25th day of October, 1911, the defendants filed their written motion for a continuance of the trial of the above-entitled cause, basing said motion upon the records, files, depositions, and upon the further interrogatories and exhibits served and filed to be propounded to the witness Andrew Jensen, and upon the affidavit of defendant M. D. McCumber served and filed with said motion; that the said written motion and the said affidavit of the said M. D. McCumber were in words and figures as follows: [105]

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER et al.,

Defendants.

**Motion for a Continuance.**

Come now defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, and move the Court for an order continuing the trial of said action until the spring term of the equity court, upon the ground and for the reasons that the defendants are not prepared and ready to go to trial in said action at the present term, because it is necessary to retake the deposition and re-examine the witness Andrew Jensen, a resident of Buffalo, North Dakota, upon further interrogatories already filed and served in this action.

This motion is based upon the affidavit of the defendant M. D. McCumber, served and filed herewith, and upon all of the records, files and depositions in the above-entitled action, and upon the further interrogatories and exhibits served and filed, to be propounded to the said witness, Andrew Jensen.

Dated at Nome, Alaska, this 25th day of October, 1911.

ELWOOD BRUNER,  
Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY and  
WILLIAM A. GILMORE,  
Attorneys for Defendant M. D. McCumber. [106]

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER et al.,

Defendants.

**Affidavit of M. D. McCumber on Motion for  
Continuance.**

United States of America,  
District of Alaska,—ss.

M. D. McCumber, being first duly sworn upon his oath deposes and says:

That he is one of the defendants in the above-entitled action; that said action was commenced in November, 1910, and was brought to issue about the opening of navigation, 1911; that immediately after the bringing of said action in November, 1910, by the plaintiff, affiant interviewed one Tom D. Jensen



of Nome, Alaska, with reference to the whereabouts of his father, Andrew Jensen, the alleged locator of the Moonlight Bench Placer Claim, claimed by the plaintiff in this action, and whose name was subscribed as a witness to the Grant location under which the defendants claim; that affiant ascertained that the said Andrew Jensen was living on a farm near Buffalo in the State of North Dakota, and affiant caused the said Tom D. Jensen to write to his father to ascertain the facts with reference to the said location; that the said Tom D. Jensen [107] did write a letter to his father, Andrew Jensen, with reference to the facts pertaining to the said placer claims, and thereafter on the 12th day of December, 1910, affiant caused the said Tom D. Jensen to write another letter to his father making further inquiries with reference to said placer claims, a copy of which said letter so written by said Tom D. Jensen to his father, Andrew Jensen, is hereunto attached and marked Exhibit "A" and made a part hereof; that at the time the said letter, Exhibit "A," was sent to said Andrew Jensen, affiant caused a blue-print of the survey by one Arthur Gibson, made in 1902, and very similar to the one used by the plaintiff in cross-examination of the said witness at the time his deposition was taken, to be mailed to said Andrew Jensen for his inspection.

That in the spring of 1911 the said Tom D. Jensen received a reply to each of said letters from said Andrew Jensen; that in the first reply to the first letter, the said Andrew Jensen wrote as follows:

“Enclosed find a raw draft of my Bench claim on Anvil Creek. It starts from the lower half of No. 1 Below on Anvil then butting against Lindblom’s Moonlight Claim and then following along Moonlight claim towards Anvil Mountain ending not very far from the base of the mountain. Grant’s claim starts right from where mine ends up the side of Anvil Mountain. There is a vale in Anvil Mountain and Grant’s claim runs up that vale. At the time I staked the Bench on Anvil there was a spring on my claim. My Bench on Moonlight you will see in the drawing was staked the full length towards Little Creek bounded on the end by the upper half of Lindblom’s Moonlight Claim. You can figure the directions out from the drawing. My Moonlight claim was not so very far from the base of Anvil mountain, possibly 100 feet.”

In the second letter received by Tom D. Jensen, in the month of April, the said Andrew Jensen stated with reference to the ground in controversy as follows:

“Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My Bench on Anvil so far as I remember was staked along the lower half of No. 1 Below Discovery on Anvil Creek, running the whole width because after running some distance towards Moonlight Creek I struck Robert Lyng’s claim on Moonlight. Then I followed [108] up the Moonlight then

again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No. 1 Below. I don't remember how many feet the upper end of my claim was, tho I think it was several hundred.

Now, Grant's location stake was set right beside mine at the upper end of Moonlight claim, running up Anvil Mountain.

There was some flat ground between the mountain and our stakes so Grant's claim takes in some of the flat ground between the end of my claim and the base of Anvil Mountain.

My bench on Moonlight was some distance from the upper half of my Anvil Bench. How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyng's claim, taking in the willows on a kind of a high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyng's stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you."

That accompanying the first reply the said Andrew Jensen mailed to Tom D. Jensen a map or drawing of the placer claims in the vicinity of Moonlight Springs and showing the location of the plaintiff's claim, as staked on the ground by him (Jensen), and giving its position between Bob Lyng's Moonlight



claim and Little Creek, as claimed by the defendants; the said original map drawn by said Andrew Jensen is attached to the interrogatories served and filed to be sent to the said witness for identification, and now referred to and made a part of this affidavit; that after the receipt of both of said letters and said map, from the said Andrew Jensen, the defendants, relying upon the facts stated in said letters, and the description given in said map, sued out a commission in the above-entitled cause and Court, to take the deposition of the said Andrew Jensen at Fargo, in the said State of North Dakota, and the defendants, relying on the said statements and map, propounded direct interrogatories to the said witness to prove the facts stated in said letters and map; that prior to the suing out the said commission to take said deposition, affiant, relying on the said letters and map, caused the said Tom D. Jensen to cable his father, Andrew Jensen, to come to Nome, offering to pay his expenses, as shown by the telegram [109] annexed to the further interrogatories filed herein; that in response to said telegram the said Tom D. Jensen received a telegram from Andrew Jensen as set forth in the said further interrogatories filed herein; that the said deposition of the said Andrew Jensen was taken at Fargo, N. D., on or about the 19th day of September, 1911, and a few days ago was filed and published in the above-entitled action; that the said Andrew Jensen in his said deposition contradicted all the material statements in his said letters and in said telegram, and the facts as shown by the said map or drawing made by him prior thereto, and upon

which defendants relied; that at the time affiant sued out the said commission to take said deposition of said Andrew Jensen, defendants had every reason to believe the statements made by said witness, Andrew Jensen, to be true, and that the facts set forth in said map or drawing were true, and that the said Andrew Jensen would so testify; that heretofore, during the past week, the defendants have caused to be served and filed upon the plaintiff a notice to retake the deposition of said witness, accompanied by further interrogatories to be propounded to the said witness, calling and directing his attention to the telegram sent to him by Tom D. Jensen, and exhibiting to him the said original map or drawing made by him of the claims in controversy, and their respective positions so that in the event the said witness denies that he ever made the statements or caused them to be made, or denies that he made the said map or drawing, or sent the said telegram that the defendants can prove at the trial that he did so make the said statements in said letters and that he did send the said telegram and that he did make the said map and drawing and cause them to be sent to the said Tom D. Jensen, and so that if the said witness admits that he did make and send the said letters, telegrams and map, that the same may be used at the time of the trial to impeach the said witness if his [110] evidence is used by the plaintiff, and to show and prove that he made other and different contradictory statements prior and at other times than the evidence given by him before the Commis-



sioner at the time his deposition was so taken, as above alleged.

That defendants desire to have the trial of this cause continued until the spring equity term so that the deposition of said Andrew Jensen may be retaken upon the further interrogatories served and filed in the above-entitled action, because the open season is about to close at Nome, and it will be impossible to have the said deposition returned to Nome before the month of February, 1912, as the same will have to be returned by the winter mails.

That by retaking the deposition and re-examining the said witness, Andrew Jensen, the defendants will prove by said witness that he wrote the letters quoted above, that he sent the telegram herein referred to and that he made and drew the map or drawing herein referred to.

The defendants further expect to prove, and will prove, by the said witness that in the month of July, and prior thereto, he talked to other and different persons on behalf of the Pioneer Mining Company, the plaintiff in this law suit as shown by the said telegram; that the said Andrew Jensen received the said sum of twelve hundred dollars at Buffalo, N. D., from the plaintiff, or its agents, and will be able to show the manner and method by which the said money was so paid; that defendants will prove by said witness that at the time he answered the second letter above referred to, he had a blue-print of the ground in controversy, made by Arthur Gibson in 1902, very similar to the one offered to him by the plaintiff at the cross-examination, at the taking of



the said deposition at Fargo, on September 19th, 1911, and with [111] the said blue-print spread in front of him, he wrote to his said son, Tom Jensen, that he was unable to identify the position of the claims in the vicinity of Moonlight Springs, from the said blue-print, and in order to give a correct idea of the way the said claims were located, he drew the said map or drawing of his own to locate said claim; that if the said witness denies that he had such a blue-print, the defendants will prove, at the trial, that he did have the Gibson survey, and the defendants will produce the said map at the trial of this action, and show the Court that the same is in all respects similar to the map used by the plaintiff at the time of the taking the said deposition, and will produce the said map so sent to said Andrew Jensen at the time of the trial to show the Court that the same is similar in all respects to the map exhibited to said Andrew Jensen at the time of the taking of his deposition by the plaintiff, Pioneer Mining Company.

That affiant has been advised by his attorneys that the only way that the said letters, telegram and map or drawing made by the said Andrew Jensen can now be used at the trial of said action is by exhibiting the same to the said Andrew Jensen for identification, admission or denial; that W. N. Grant, the locator of the Grant claim, under which the defendants in this action claim the ground in controversy, has long since been deceased and defendants have no other way of denying, refuting and impeaching the statements made by the said Andrew Jensen in his

said deposition, other than by showing that the same are absolutely and utterly false by his own prior statements, telegram and drawing, in so far as the same refer to the location of said claims, their positions and the acts and statements attributed to the said W. N. Grant are concerned; that defendants have no other ways or means of refuting the said statements of the said Andrew Jensen in his said deposition, other than by retaking his said deposition and identifying [112] the said exhibits.

That as a further and additional reason why the said trial should be continued at this time, the last steamer leaving the port of Nome for Seattle during the present open season, leaves on Sunday, the 29th day of October, 1911, only four (4) days distant; that if this cause is set for trial it will be necessary for the defendants to take the deposition of two or three witnesses who are about to leave on the steamer "Victoria" on said 29th day of October; that owing to the number of legal questions that will arise as shown by the pleadings, in this case, it will be impossible to reach the defendants' case before said time and, therefore, it will be necessary to take the depositions while the said trial would be progressing, some of said depositions requiring a great length of time to take; that defendants intend to and expect to take the said depositions during this present week, so as to be ready for trial of this cause in the month of February, as soon as the said Jensen's deposition is returned; that affiant has stated his case to his counsel and attorneys; and has been fully advised that it is impossible for him to safely go to trial in

this action without the right to use the said exhibits at the trial if the plaintiff uses the said deposition of the said witness Andrew Jensen; that defendants have been advised by their attorneys that they have several meritorious defense in law and fact to said action.

Wherefore affiant prays that the Court grant defendants' motion to continue the trial of said action until the month of February, 1912.

M. D. McCUMBER.

Subscribed and sworn to before me this 25th day of October, 1911.

[Notarial Seal] WILLIAM A. GILMORE,  
Notary Public in and for the District of Alaska.

[113]

**Exhibit "A" [to Affidavit of M. D. McCumber on  
Motion for Continuance].**

My dear father:—

I wrote you sometime since in regard to come litigation there was coming up in regard to your Bench No. 1 on Moonlight. The Pioneer Mining Company now holds your title to that ground. You remember the ground Grant located, you were a witness on his location notice. According to his location notice his claim joins to some extent Bob Lyng's Moonlight claim. You know whether it did or not. Did Grant's claim take in some of the willows or flat ground or was it entirely on the rock pile?

I am sending you a map which shows your No. 6 Bench the Lyng Moonlight<sup>1</sup> Claim and your No. 1 Moonlight Bench which the Pioneer people now



claim take the best portion of the Grant claim; that part which I have lined in red ink. Now if I remember correctly your Moonlight Claim was further away from your No. 6 Bench and came quite a ways from touching it. Your No. 6 Bench on this map is well established and recognized. Now I wish you would trace on the inclosed map what you believe is the correct boundaries of the No. 1 Moonlight Bench Claim.

A couple of boys have put several years earnings in to discover the pay streak on the Grant Claim, now the Pioneer Company is jumping onto their necks and trying to take it away from them. If these boys are entitled to this ground as the Grant Claim I would like to see them hold it and you would be doing several people a considerable favor if you could help them out. If they are not entitled to it the sooner that they find it out the better for them.

I wish you would answer this by return mail also send back the map. You do not need to fear that this will involve you in any way. Please write immediately so that your reply will come in by the winter mail.

Very truly your son,

TOM. [114]

And be it further remembered that the notices for retaking the deposition of the witness Andrew Jensen, considered by the Court, are in words and figures as follows:

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Notice of Commission to Take Deposition of Andrew  
Jensen on Further Redirect Interrogatories  
Propounded and Served Herewith.**

To the Pioneer Mining Company, a Corporation,  
Plaintiff, and to Messrs. G. J. Lomen and O. D.  
Cochran, Attorneys for Said Plaintiff, Pioneer  
Mining Company:

You and each of you please take notice that the  
defendants, the Pacific Coal & Transportation Com-  
pany, a corporation, and M. D. McCumber, will  
apply to the clerk of the above-entitled court at his  
office in the courthouse, on Tuesday, October 24th,  
1911, at the hour of ten o'clock A. M., for a commis-  
sion to be issued to E. C. Gearey, Jr., clerk of the Dis-  
trict Court, Third Judicial District, Cass County, N.  
D., residing at Fargo, in said Cass County, State of  
N. D., to take the deposition of Andrew Jensen, a  
witness residing in Cass County, near Fargo, N. D.;  
said deposition to be taken on written interrogatories  
to be filed with the clerk of the above-entitled court,

and mailed to said commissioner. [115]

Attached hereto are the further redirect interrogatories to be propounded to the said witness on behalf of said defendants;

And you are further notified to prepare and serve and file, on or before said date above mentioned, any recross-interrogatories desired by you to be propounded to said witness by said commissioner.

Dated at Nome, Alaska, this 20th day of October, A. D. 1911.

ELWOOD BRUNER,

Attorney for Pacific Coal & Transportation Company.

WILLIAM A. GILMORE, and

GEO. B. GRIGSBY,

Attorneys for M. D. McCumber.

*In the District Court for the District of Alaska, Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.



**Notice for Commission to Take Deposition of Andrew Jensen on Further Interrogatories Propounded and Served Herewith.**

To the Pioneer Mining Company, a Corporation, Plaintiff, and to Messrs. G. J. Lomen and O. D. Cochran, Attorneys for said Pioneer Mining Company: [116]

You and each of you will please take notice that the defendants Pacific Coal & Transportation Company, a corporation and M. D. McCumber, will apply to the clerk of the above-entitled court at his office in the Courthouse in Nome, Alaska, on Wednesday, November 1st, 1911, at the hour of nine o'clock A. M. for a commission to be issued to E. C. Gearey, Jr., Clerk of the District Court, Third Judicial District, Cass County, North Dakota, residing at Fargo, in said Cass County, N. D., to take the deposition of Andrew Jensen a witness residing in said Cass County near Fargo, N. D.; said deposition to be taken on written interrogatories heretofore served upon you on the 20th day of October, 1911, and filed of record in the office of the Clerk of the above-entitled court, as well as further interrogatories served and filed herewith, all of said interrogatories to be propounded to said witness in behalf of said defendants:

And you are further notified to propound and serve and file on or before said date above mentioned, any cross or recross-interrogatories desired by you to be propounded to said witness by said commissioner.

This further notice is given to you and each of you

for the reason that you have objected because the defendants failed to give you five (5) full days' notice at the time of serving a former notice upon you on said 20th day of October, 1911.

Dated at Nome, Alaska, this 26th day of October, A. D. 1911.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSY and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber. [117]

And be it further remembered that the interrogatories to be propounded to the witness, Andrew Jensen, upon which the said motion for a continuance was based, and which were considered by the Court, were in words and figures as follows:

*In the District Court for the District of Alaska, Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Redirect Interrogatories to be Propounded to the  
Witness Andrew Jensen.**

Redirect Inter.

No. 1. Q. Mr. Jensen, do you know Mr. Tom D. Jensen of Nome, Alaska, and if so, state whether or not he is your son.

No. 2. Q. If, in answer to the last interrogatory you state that Tom D. Jensen of Nome, Alaska, is your son, please state whether or not you received any letters from him, written at Nome, Alaska, during the winter of 1910 and 1911, with reference to the ground in controversy in the above-entitled action.  
[118]

No. 3. Q. If, in answer to the last interrogatory you state that you did receive a letter or letters from your son, Tom D. Jensen, please state whether or not you now have those letters in your possession and if so hand them to the commissioner taking your deposition and have them marked and attached to your deposition.

No. 4. Q. Please state whether or not you wrote or caused to be written any answers to the said letters received by you to the said Tom D. Jensen, and if so, how many letters.

No. 5. Q. If, in answer to the last interrogatory you state that you wrote two letters to



said Tom Jensen, or caused them to be written, please give the dates of said letters.

No. 6. Q. If in answer to a preceding interrogatory you state that along about January, 1911, you wrote or caused to be written a letter to your son Tom Jensen, in reply to one from him about the ground in controversy, please state if it is not a fact that in said letter you wrote to him in substance as follows:

“Enclosed find raw draft of my Bench claim on Anvil Creek; it starts from the lower half of No. 1 Below on on Anvil then butting against Lindblom’s Moonlight claim and then following along Moonlight claim towards Anvil Mountain ending not very far from the base of the mountain. Grant’s claim starts right from where mine ends up the side of Anvil Mountain. There is a vale in Anvil Mountain and Grant’s claim runs up that vale. At the time I staked the bench on Anvil there was a spring on my claim. My Bench on Moonlight you will see in the drawing was staked the full length towards Little Creek bounded on the end by the upper half of Lindblom’s Moonlight claim. You can figure the directions out from the drawing. My Moonlight claim was not

so very far from the base of Anvil mountain, possibly 100 feet."

No. 7. Q. Please examine Exhibit "A" attached to these [119] interrogatories and state whether or not the drawing marked Exhibit "A" is the raw draft or drawing referred to in said letter.

No. 8. Q. Is it not a fact that the said drawing is the drawing referred to in said letter, and that the same was drawn by you in the month of January, 1911, at your home near Buffalo, N. D., and mailed to your son Tom Jensen at Nome, Alaska, to illustrate the placer claims in the vicinity of Moonlight Springs near Nome, and that said drawing was made by you for that express purpose?

No. 9. Q. Is it not a fact that you used the language in substance quoted in interrogatory No. 6 above to your son Tom Jensen in the letter written to you to him for the purpose of explaining the said map or drawing?

No. 10. Q. Please examine Exhibit "B" attached to these interrogatories and state whether or not you received the original of said letter, being a letter from your son Tom Jensen to you, dated Nome, Alaska, December 12th, 1910.

No. 11. Q. If you answer the preceding interrogatory and state that you did receive the said letter from your son Tom Jensen,

at Buffalo, N. D., in February or March, 1911, please state if it is not a fact that you thereupon answered said letter, or caused the same to be answered immediately thereafter by stating in a letter to your son, Tom Jensen, in substance as follows:

“Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My Bench on Anvil so far as I remember was staked along the lower half of No. 1 Below Discovery on Anvil Creek, [120] running the whole width because after running some distance towards Moonlight Creek I struck Robert Lyng’s claim on Moonlight. Then, I followed up the Moonlight then again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No. 1 Below. I don’t remember how many feet the upper end of my claim was, tho I think it was several hundred.

Now, Grant’s location stake was set right beside mine at the upper end of Moonlight claim, running up Anvil Mountain.

There was some flat ground between the mountain and our stakes so Grant’s



claim takes in some of the flat ground between the end of my claim and the base of Anvil mountain.

My Bench on Moonlight was some distance from the upper half of my Anvil Bench. How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyng's claim, taking in the willows on a kind of a high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyng's stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you."

No. 12. Q. Please state if Tom D. Jensen is the same person to whom you gave or deeded or conveyed the half interest in said Bench claim to in 1899 or 1900, as mentioned in your deposition previously taken.

No. 13. Q. If, in answer to the preceding interrogatory you state that you did write to your said son, Tom Jensen, letters in substance as quoted in preceding questions, please state whether or not you were trying to deceive him by what you

wrote and by the map you drew or whether you were telling him the truth in said letters and by said map.

No. 14. Q. In your deposition previously taken you said that the only person you talked to about the location of these claims in this action was a Mr. Holt, a member of the law firm of Engerud, Holt and Frame, of Fargo, N. D., during the month of August, 1911. Please examine Exhibit "C" attached [121] to these interrogatories and state whether or not you sent or caused to be sent, from Buffalo, N. D., to your son Tom Jensen, at Nome, Alaska, on the 28th day of July, 1911 a telegram in substance and to that effect.

No. 15. Q. If you answer the last interrogatory in the affirmative and state that you did send a telegram to Tom Jensen in words and substance as given in Exhibit "C," please state if it was true that the Pioneer Mining Company, or its agents were in Buffalo, N. D., in the month of July urging you to come to Alaska at their expense.

No. 16. Q. Please state to whom you requested the Pioneer Mining Company to wire twelve hundred dollars to the Buffalo Bank for you as stated in your said telegram.

- No. 17. Q. Please state whether or not the Pioneer Mining Company paid you the twelve hundred dollars requested by you to be wired to the Buffalo bank, or any other sum or sums, giving the time, manner of payment and by whom.
- No. 18. Q. Are you acquainted with Mrs. G. J. Lomen, the wife of the attorney for the plaintiff, Pioneer Mining Company, at Nome, Alaska?
- No. 19. Q. If you answer the last interrogatory in the affirmative state when you became acquainted with her and where.
- No. 20. Q. Please state whether or not Mrs. Lomen visited at your farm near Buffalo, N. D., in the month of July, 1911, and if so how long she remained the guest of you and your wife at Buffalo. [122]
- No. 21. Q. Please state if it is not a fact that Mrs. Lomen is related by marriage to a member of the law firm of Engerud Holt and Frame, and if so state the relation and to which member of the firm.
- No. 22. Q. Please state who wired from Buffalo or Fargo to the Pioneer Mining Company or its attorneys at Nome, with reference to paying you the said sum of twelve hundred dollars.
- No. 23. Q. Examine Exhibit 'D' attached to these interrogatories and state if you received the said telegram.



- No. 24. Q. If you answer the last interrogatory in the affirmative that you did receive the said telegram please state if it is not a fact that you sent the telegram Exhibit "C" in reply thereto.
- No. 25. Q. In your letters written to your son last winter when you were telling all you knew about the claims in the vicinity of Moonlight Springs, why didn't you tell about the Nelson claim?
- No. 26. Q. When you drew the raw draft or drawing that you sent to your son Tom in your letter, why did you not draw in the said Nelson claim if you staked your Bench on Moonlight adjoining it, as you have testified in your deposition?
- No. 27. Q. Please hand to the Commissioner any and all letters or telegrams received by you or sent by any person connected with this litigation, or by any other person on behalf of any person connected with the litigation pertaining to any matter, or thing connected with the controversy in this action.
- No. 28. Q. If, in answer to interrogatory No. 6 you state [123] that you caused your daughter Katie Jensen, on or about the 25th day of January, 1911, to write a letter for you to your son Tom Jensen, at Nome, in reply to one received by you from him, please state if it is not a

fact that you stated to her at that time, you and she being present, and that she wrote at your dictation, in substance the following language:

“Enclosed find a raw draft of my Bench claim on Anvil Creek; It starts from the lower half of No. 1 Below on Anvil then butting against Lindblom’s Moonlight claim and then following along Moonlight claim towards Anvil Mountain ending not very far from the base of the mountain. Grant’s claim starts right from where mine ends up the side of Anvil Mountain. There is a vale in Anvil Mountain and Grant’s claim runs up that vale. At the time I staked the bench on Anvil there was a spring on my claim. My Bench on Moonlight you will see in the drawing was staked the full length towards Little Creek bounded on the end by the upper half of Lindblom’s Moonlight claim. You can figure the directions out from the drawing. My Moonlight claim was not so very far from the base of Anvil Mountain, possibly 100 feet.”

No. 29. Q. If in answer to interrogatory No. 11 you state that you caused your daughter Katie Jensen, to write to your son Tom Jensen, in reply to a letter received by you from him, please state if it is not a fact that you stated to her at that time

and place, you and she being present, and that she wrote at your dictation, in substance the following language:

“Received your letter together with map of claims. It is impossible for me to do any marking on the map because I think the claims do not seem to be in the same positions. My Bench on Anvil so far as I remember was staked along the lower half of No. 1 Below Discovery on Anvil Creek, running the whole width because after running some distance towards Moonlight Creek, I struck Robert Lyng’s claim on Moonlight. Then, I followed up the Moonlight then again along the upper end of Moonlight claim until I had the 1320 feet from the location stake on No. 1 Below. I don’t remember how many feet the upper end of my claim was, tho I think it was several hundred. [124]

Now, Grant’s location stake was set right beside mine at the upper end of Moonlight claim, running up Anvil Mountain.

There was some flat ground between the mountain and our stakes so Grant’s claim takes in some of the flat ground between the end of my claim and the base of Anvil Mountain.

My Bench on Moonlight was some dis-



tance from the upper half of my Anvil Bench. How far I do not remember. My Bench on Moonlight started from the upper end of Robert Lyng's claim, taking in the willows on a kind of a high bench but not clean up to the base of the mountain. There was some space between the base of the mountain and my claim. If I remember correctly the last year I was there I think Robert Lyng's stakes had been moved some up towards Anvil Mountain from where they were originally located. I think this was done in order to take in all the springs. This is about all the information I can give you."

Respectfully submitted,  
ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY and  
WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.

**Exhibit "C" [to Redirect Interrogatories to be Propounded to Witness Andrew Jensen].**

SIGNAL CORPS, UNITED STATES ARMY.

Telegram.

RECEIVED AT

11 FD WN D 23 Paid

U Buffalo N. D. July 28, 1911.

Tom Jensen,

Nome?

Pioneer Company here wanted me come Alaska

their expense requested wire twelve hundred dollars  
buffalo bank to pay time expenses would then go.

10 56 am

ANDREW JENSEN.

**Exhibit "D" [to Redirect Interrogatories to be Pro-  
pounded to Witness Andrew Jensen].**

SIGNAL CORPS, UNITED STATES ARMY.

Telegram.

[125]

SEND the following Message:

Nome July 15, 1911.

Andrew Jensen

Buffalo Cass Co.

North Dakota.

McCumber wants you witness his case trial Sep-  
tember fifth. Expenses and time guaranteed.

TOM D. JENSEN.

**Exhibit "B" [to Redirect Interrogatories to be Pro-  
pounded to Witness Andrew Jensen].**

Dec. 12th, 1910.

My dear father:—

I wrote you sometime since in regard to some liti-  
gation there was coming up in regard to your bench  
No. 1 On Moonlight. The Pioneer Mining Company  
now holds your title to that ground. You remember  
the ground Grant located, you were a witness on his  
location notice. According to his location notice his  
claim joins to some extent Bob Lyng's Moonlight  
claim. You know whether it did or not. Did  
Grant's claim take in some of the willows or flat  
ground or was it entirely on the rock pile?

I am sending you a map which shows your No. 6  
Bench the Lyng Moonlight Claim and your No. 1

Moonlight Bench which the Pioneer people now claim take the best portion of the Grant claim; that part which I have lined in red ink. Now if I remember correctly your Moonlight Claim was further away from your No. 6 Bench and came quite a ways from touching it. Your No. 6 Bench on this map is well established and recognized. Now I wish you would trace on the inclosed map what you believe is the correct boundaries of the No. 1 Moonlight Bench Claim.

A couple of boys have put several years earnings in to discover the pay streak on the Grant Claim, now the Pioneer Company is jumping onto their necks and trying to take it away from them. If these boys are entitled to this ground as the Grant Claim I would like to see them hold it and you would be doing several people a considerable favor if you could help them out. If they are not entitled to it the sooner that they find it our the better for them.

I wish you would answer this by return mail also send back the map. You do not need to fear that this will involve you in any way. Please write immediately so that your reply will come in by the winter mail.

Very truly your son,

TOM. [126]







Exhibit "A"

an ex. l M

Green  
plain

My bench  
on Moonlight

Spring

Moonlight

No. 1 below

Curve in road





Be it further remembered that on the 26th day of October, 1911, the said written motion for a continuance came on regularly to be heard before the Court, the plaintiff being represented by its attorneys of record, and the defendants being represented by their attorneys of record, the said motion for a continuance was argued by counsel for plaintiff and counsel for defendants and submitted to the Court and thereafter on the 27th day of October, 1911, the Court rendered its decision on said motion, denying the defendants' motion for a continuance, to which ruling of the Court the defendants then and there excepted, which said exception was allowed by the Court.

AND BE IT FURTHER REMEMBERED that thereafter on the 2d day of November, 1911, the defendants served upon plaintiff and filed their written motion for a change of trial judge, which said motion was based upon all of the records, files, depositions and proceedings in the above-entitled action and upon the affidavits of M. D. McCumber and Elwood Bruner, served and filed with said motion; that said written motion and the said affidavits served and filed therewith, were in words and figures as follows:

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY,

Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER et al.,

Defendants.

**Motion for Change of Trial Judge. [128]**

Comes now defendants and move the Court under section 5, Part III, chapter 1 of the Alaska Code for an order assigning and setting the above-entitled cause for trial in the above-entitled court, at Nome, Second Division, District of Alaska, before another judge of the district court for the District of Alaska, at such time as such Judge will appear and try the cause.

This motion is made and based upon the affidavits of defendant M. D. McCumber and of Elwood Bruner, one of the attorneys for defendant Pacific Coal & Transportation Company, served and filed herewith, and upon all of the records, files, depositions and proceedings in the above-entitled action.

Dated at Nome, Alaska, this 2d day of November, A. D. 1911.

ELWOOD BRUNER,

Attorney for Defendant P. C. & T. Co.

GEO. B. GRIGSBY, and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber.



*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER et al.,

Defendants.

**Affidavit of M. D. McCumber [129] [in Support of  
Motion for Change of Trial Judge, etc.].**

United States of America,  
District of Alaska,—ss.

M. D. McCumber, being first duly sworn, deposes  
and says:

That he is one of the answering defendants in the above-entitled action; that the said action was begun in November, 1910, and about eleven years after the location of the placer claims involved in the controversy, and more than two years after affiant had been mining and operating upon the ground in controversy, with full notice and knowledge during all of said years on the part of the plaintiff; that the said action was brought to issue in May or June, about the opening of navigation in 1911, and thereupon the defendants by motion, asked the Court to submit certain issues of fact, among others the question of possession, to a jury, the defendants by their answers, showing that they were in possession of the ground in controversy at the time said action was

begun, which said motion was denied by the Court; that thereafter certain depositions were taken in the cause and it became necessary for the defendants to procure a continuance of the trial of the said cause until the month of February, 1912, thus to enable affiant and his codefendant, to procure certain evidence material and necessary to their defense in said cause, and that the said evidence was in no wise cumulative; that without any counter showing or denial of the things and matters set forth in the motion and affidavits of affiant filed therein in support of said motion, the Court denied defendant's said motion for a continuance; that during all of the times since said action was begun, in November, 1910, the present Judge Honorable Cornelius D. Murane, was the presiding judge of the above-entitled court.

That affiant believes that the said judge of the [130] above-entitled court is biased through friendship, in favor of the plaintiff, Pioneer Mining Company, and is prejudiced and biased against the defendants, and that by reason of said bias and prejudice the said judge refused to grant the defendants a jury trial on the issues of fact prayed for, and also refused to grant a continuance of the trial of said action for a reasonable time to enable the defendants to prepare for trial, as prayed for by the defendants; that affiant believes that defendants cannot have a fair and impartial trial before the present Judge of this Court, by reason of the said prejudice and bias above alleged, and alleges that the said judge is disqualified from acting as trial Judge in said cause by reason thereof; that affiant is informed

and believes that one of the Judges of one of the other divisions of the District of Alaska, will be in Nome upon the opening of navigation, 1912, and about the month of June, for the purpose of trying certain suit or suits now pending and at issue in said court, which said suit or suits the said Judge Murane has refused to try by reason of disqualification on the grounds of having been formerly associated as counsel in said case or cases.

M. D. McCUMBER.

Subscribed and sworn to before me this 1st day of November, A. D. 1911.

[Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

[131]

*In the District Court for the District of Alaska,  
Second Division.*

No. —.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER et al.,

Defendants.

**Affidavit of Elwood Bruner [in Support of Motion for  
Change of Trial Judge, etc.].**

United States of America,  
District of Alaska,—ss.

Elwood Bruner, being first duly sworn, deposes  
and says:



I am attorney of record for the defendant Pacific Coal & Transportation Company, one of the defendants in this cause; I have joined with my codefendant, M. D. McCumber, in asking for a change of trial Judge of this suit; that I am a regularly admitted and practicing attorney of the District Court, District of Alaska, Second Division; that I am familiar with the District Court for the District of Alaska, as now consisted; that there are four resident Judges within the District of Alaska, presiding over the four judicial divisions thereof, one at Juneau, one at Valdez, one at Fairbanks and one at Nome; that I am one of the attorneys of record in the case of Rogers et al. vs. Halla et al. and am a defendant in said action; that the defendants in said action of Rogers et al. vs. Halla et al., have repeatedly moved the Court to either try the said action or call to Nome one of the other Judges of the District Court of Alaska to proceed to trial thereof; [132] that the Judge of the above-entitled court has refused to try said cause on the ground of disqualification, but has stated in open court when said matter was before the court, that it was his intention to invite one of the other Judges of the District Court, District of Alaska, to come to Nome during the open season of 1912, to try said action; that the said action of Rogers et al. vs. Halla et al., is a local action involving the titles to mining lands within the Nome district; that the matters involved in the above-entitled action of the Pioneer Mining Company vs. The Pacific Coal & Transportation Company et al., is a local action involving the title

to mining land within the Nome Mining District, and if the above-entitled court will assign and set the trial of the above-entitled action at the same time as the case of Rogers et al. vs. Halla et al., both of said actions can be tried during the open season of 1912 at Nome, Alaska, where all of the parties and many of the witnesses reside.

That if said assignment is made affiant believes that justice can be done between the parties to the said action.

ELWOOD BRUNER.

Subscribed and sworn to before me this 1st day of November, A. D. 1911.

[Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

And be it further remembered that thereafter on the 4th day of November, 1911, the said motion came on regularly to be heard before the Judge of the above-entitled court, the plaintiff being represented by its attorneys of record, and the defendants being represented by their attorneys of record, and thereupon the plaintiff read to the Court the following [133] written objections to the motion of the defendants, which said written objections were in words and figures as follows:

*In the District Court for the District of Alaska,  
Second Division.*

PIONEER MINING COMPANY,

Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION COM-  
PANY et al.,

Defendants.

**Objections to Motion [for Change of Trial Judge,  
etc.].**

Now comes the plaintiff above named, and objects to the motion and application of the defendants herein for a change of venue, or the trial of said cause by a Judge of another District, and to the postponement of the trial said action for such purpose or purposes, on the grounds following, to wit:

1. The application of the defendants does not state facts sufficient to authorize the Court to change the venue of said action, or to call in another Judge to try said case, or to appear or preside during the disposition of said case, or to change the venue thereof.

2. That said application comes too late and after the case has been set down for trial, and defendants are guilty of laches in making said application.

3. The motive for the application is clearly delay, and the application is not made in good faith.

4. Said application is wholly based upon the belief of the applicant M. D. McCumber, and is without any valid reason or ground in fact, stated or alleged. [134]



5. It does not appear that the several defendants in said action have joined in said application.

6. It does not appear that any Judge of any other District will appear and preside during the disposition of said cause, or try said case.

7. The application is not authorized by law, but is contrary to law.

G. J. LOMEN,

O. D. COCHRAN,

GEO. D. SCHOFIELD,

Attorneys for Plaintiff.

*In the District Court for the District of Alaska,  
Second Division.*

PIONEER MINING COMPANY,

Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY et al.,

Defendants.

**Further Objections to Allowance of Defendants'  
Motion to Have Case Set for Trial Before  
Another Judge.**

Comes now the plaintiff in the above-entitled cause and hereby resists and objects to the allowance by the Court, of the motion of the defendants filed herein, to have the above-entitled cause assigned for trial before another Judge of the District of Alaska, or to the granting to a continuance of the trial of this cause for such purpose, for the following reasons:

First. Because the affidavits filed in support of said [135] motion are insufficient in law to establish any bias or prejudice in relation to said cause

or any party related therewith on the part of the Judge of this Court.

Second. Because the affidavits filed in support of said motion, do not recite any fact or facts upon which the defendants rely to establish the existence of prejudice or bias on the part of the trial Judge of this Court.

G. J. LOMEN,  
GEO. D. SCHOFIELD,  
O. D. COCHRAN,

Attys. for Plts.

And thereafter the said motion and objections were argued to the Court by the attorneys for plaintiff and the attorneys for the defendants, and submitted to the Court, and the Court thereupon rendered its decision denying the said motion of the defendants, to which ruling of the Court the defendants then and there excepted, which said exception was allowed by the Court.

And be it further remembered that thereupon on said 4th day of November, 1911, the Court, over the objection of the defendants, upon the motion of plaintiff, set said cause for trial on Monday the 13th day of November, 1911, to which ruling of the Court the defendants then and there excepted, which said exception was allowed by the Court.

And now in furtherance of justice and that right may be done, the defendants present the foregoing bill of exceptions No. 2, and pray that the same may be settled, allowed, signed and certified by the Court,

as allowed by law.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

GEO. B. GRIGSBY and

WILLIAM A. GILMORE,

Attorneys for Defendant M. D. McCumber. [136]

The foregoing Bill of Exceptions having been served, filed and presented, as required by law, and being full, true and correct, is hereby settled and allowed.

Done in open Court this 30th day of Dec., 1911.

CORNELIUS D. MURANE,

District Judge.

Service of the above and foregoing proposed bill of exceptions acknowledged by receipt of a copy, this 10th day of November, 1911.

O. D. COCHRAN,

Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Company, M. D. McCumber et al., Defendant. Defendants' Proposed Bill of Exceptions No. 2. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Nov. 10, 1911. John Sundback, Clerk. By —————, Deputy. C. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for M. D. McCumber. Vol. 9, Orders and Judgments, p. 232. C.



Refiled in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 30, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. [137]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Motion for New Trial.**

Come now defendants Pacific Coal & Transportation Company and M. D. McCumber, and move the Court for an order vacating and setting aside the decision of the Court heretofore rendered in the above-entitled action, and granting them a new trial herein, for the following reasons:

1. Insufficiency of the evidence to justify the decision of the Court, and that the same is against law.

(a) Insufficiency of the evidence to justify finding No. IV made and signed by the Court.

(b) Insufficiency of the evidence to justify the Court's finding No. V made and signed by the Court.

(c) Insufficiency of the evidence to justify the Court's finding No. VI made and signed by the Court,

that the plaintiff, Pioneer Mining Company was, on the 7th day of November, 1910, the date of the commencement of this action, and for a long time prior thereto had been in the actual occupancy and exclusive possession of the whole of said mining claim known and described by the plaintiff as Bench No. 1 Moonlight, and that the defendants were not in the possession of any portion of said mining [138] claim on said 7th day of November, 1910, nor they or either of them have been in the occupation or possession of any part of said mining claim for a long time prior thereto; and insufficiency of the evidence to justify the Court in its decision in finding that the plaintiff was in the possession or occupancy of the ground in controversy at the time it commenced this suit or at any time, or at all.

(d) Insufficiency of the evidence to justify the Court in making finding No. VII.

(e) Insufficiency of the evidence to justify the Court in making finding No. VIII.

(f) Insufficiency of the evidence to justify the Court in making its finding No. IX.

(g) Insufficiency of the evidence to justify the Court in making its finding No. X.

(h) Insufficiency of the evidence to justify the Court in making its finding No. XI.

(i) Insufficiency of the evidence to justify the Court in making its finding No. XII.

(j) Insufficiency of the evidence to justify the Court in making its finding No. XIII, particularly in finding that the defendant, M. D. McCumber was not on the 7th day of November, 1910, the date upon

which this action was commenced, and for a long time prior thereto, in the open, notorious and exclusive possession of the ground in controversy, and particularly that the defendant, M. D. McCumber, has not since been in such possession, and particularly that the defendant, M. D. McCumber, did not have on said date, mining equipment upon the ground in controversy.

(k) Insufficiency of evidence to justify the Court in making its finding No. XIV. [139]

(l) Insufficiency of the evidence to justify the Court in its finding No. XV.

(m) Insufficiency of the evidence to justify the Court in its finding No. XVI.

(n) Insufficiency of the evidence to justify the Court in its finding No. XVII.

(o) Insufficiency of the evidence to justify the Court in its finding No. XVIII.

2. Errors in law occurring at the trial and accepted to by the defendants:

(a) The Court erred in denying the defendants the right to show and prove that the plaintiff held the ground south of the Bob Lyng and Grant claims under the location and title of the Jerome Fraction, and that during the years from 1902 to 1907 the plaintiff performed the annual assessment work thereon and duly recorded proof of labor for the same.

(b) The Court erred in permitting the witness, Arthur Gibson, over the objection of the defendants, to testify that certain alleged stakes and corners were indicated and pointed out to him by one C. L. Spanggard, said Spanggard not a party to the action,



the said evidence being purely hearsay.

(c) The Court erred in permitting the plaintiff to amend their complaint during the time of the trial, by changing the description of the northwest corner of their alleged placer claim a distance of over 130 feet.

(d) The Court erred in permitting Plaintiff's Exhibit "A" to be admitted in evidence over the objection of the defendants, said exhibit containing many writings and markings that were not proven.

(e) The Court erred in not permitting the witness, Arthur Gibson, to testify that he had been employed by the plaintiff to coach the attorneys for plaintiff during the taking of depositions [140] prior to the trial.

(f) The Court erred in refusing to strike from the record at the request of defendants, certain hearsay evidence given by the witness Arthur Gibson, relating to certain stakes and markings which the said witness, Arthur Gibson, testified were indicated and pointed out by one C. L. Spanggard.

(g) The Court erred in not permitting the witness, Dan Jones, to testify that he had a certain blueprint with him upon the ground, at the time of making his survey, made by Arthur Gibson.

(h) The Court erred in refusing and denying the defendants' offer to prove that the defendant, McCumber, and his employees, were in occupancy and possession of the ground in controversy from the date upon which the suit was commenced until the date of the trial and during the trial.

(i) The Court erred in refusing to admit in evi-

dence Defendants' Exhibit No. 12, for identification, being a map of the ground in controversy and surrounding claims, made by the witness Dan Jones.

(j) The Court erred in denying the defendants the right to offer certain location certificates of water rights, made by them and their agents, upon the premises in controversy.

(k) The Court erred in not permitting the witness, E. L. Howard, to testify on behalf of the defendants, that during the time she had charge of the ground in controversy, that the plaintiff or its predecessors, never claimed or made claim to the ground in controversy, or any part thereof.

(l) The Court erred in not permitting the witness, Robert Lyng, to testify that the Pioneer Mining Company, or any of its predecessors, never claimed any portion of the Lyng or Moonlight claim as part and parcel of plaintiff's alleged Bench No. 1 Moonlight. [141]

(m) The Court erred in not permitting the witness, F. M. Warsing, on behalf of the defendants, to testify that the dumps that were situated on the ground in controversy, and extracted by those in privity with the defendants, were in plain sight, open and notorious to anyone passing over the ground in that vicinity.

(n) The Court erred in denying the defendants the right to show that no one molested witness, F. M. Warsing, while he was working on the ground in controversy under an option in privity with the defendant, Pacific Coal & Transportation Company.

(o) The Court erred in denying the defendants

the right to show by the witness, Ai Brown, that the plaintiff did not make any claim to the ground in controversy while the said witness was employed in working on the ground in controversy.

(p) The Court erred in refusing and denying the defendants the right to show by the witness, Adolph Meyer, that the development and prospecting work done by him indicated a channel running through the premises in controversy.

(q) The Court erred in refusing to permit the defendants to show by the witness, S. J. Bakke, that the Moonlight Water Company was a subsidiary company to the Pioneer Mining Company and maintaining its office with the Pioneer Mining Company, and that the Pioneer Mining Company controlled the Moonlight Water Company.

(r) The Court erred in denying the offer of the defendants to prove by the witness, J. W. Charles, that he resided on the Grant claim within the ground in controversy and as an employee of the defendant McCumber, from the first day of May, 1911, until the 7th day of July, 1911.

(s) The Court erred in refusing to permit the defendants to show and prove by the witness S. J. Bakke that the Moonlight [142] Water Company maintained its office with the Pioneer Mining Company and that said company was managed directly by Mr. Lindeberg, president of the Pioneer Mining Company through said witness as manager; and that the Pioneer Mining Company, during the time of the litigation between the Moonlight Water Company and Howard and Doverspike, lessees of the defend-



ant, Pacific Coal & Transportation Company, that the Pioneer Mining Company stood by during all of those years and did not assert title to the ground in controversy that was then being litigated.

(t) The Court erred in refusing to admit in evidence, at the request of the defendants, Defendants' Exhibit 50 for Identification, being a letter from the witness, Tom D. Jensen to W. A. Gilmore.

(u) The Court erred in refusing to admit in evidence, at the request of the defendants, plat or map identified by the witness, Tom D. Jensen, and marked Exhibit 51 for Identification, being a map or plat identified by the witness as one drawn by his father, Andrew Jensen, the locator of the plaintiff's alleged claim.

(v) The Court erred in refusing and denying the defendants the right to show by the witness, Tom D. Jensen, that he had an interest in placer claim known as Bench No. 1 Moonlight and that he was an equitable owner therein.

(w) The Court erred in refusing to allow the defendants to show by the witness Tom D. Jensen, that he was an owner and predecessor of the plaintiff, and that during his ownership there was no conflict between the placer claim known as the Lyng or Moonlight claim and Bench No. 1 Moonlight.

(x) The Court erred in refusing to permit the defendants to show that the witness Tom D. Jensen, while an owner in the claim No. 1 Bench Moonlight never asserted title or claimed that said placer claim conflicted in any way with the Grant [143] claim or the Lyng or Moonlight claim.

(y) The Court erred in refusing to allow the defendants to offer in evidence the complaint, answer, reply and decree in the case of Jafet Lindeberg et al. vs. George Doverspike et al.

(z) The Court erred in refusing to permit the defendant, M. D. McCumber, to testify and prove that the plaintiff attempted to buy his title to the ground in controversy prior to the institution of this action.

(aa) The Court erred in permitting the plaintiff to offer in evidence, over the objection of defendants, Exhibits "N" and "O," being the articles of incorporation and designation of agent of the Pacific Coal & Transportation Company.

Respectfully submitted,  
ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company,

WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber.

Service of the above and foregoing motion for new trial acknowledged by receipt of copy, this 16th day of April, 1912.

G. J. LOMEN,  
Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co., M. D. McCumber et al., Defendants. Motion for New Trial. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 16, 1912. John Sundback, Clerk. By —————, Deputy. L.

William A. Gilmore, Attorney at Law, Nome, Alaska,  
Attorney for M. D. McCumber. [144]

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*In the District Court for the District of Alaska,  
Second Division.*

Term Minutes, General, 1912, Term, beginning  
February 5, 1912.

Saturday, April 20, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,  
presiding.

Upon the convening of Court the following proceedings were had:

2245.

PIONEER MINING CO.

vs.

PACIFIC COAL & TRANSPORTATION CO.  
et al.

Upon consent of the parties the motion for new trial filed herein was called up, argued and submitted to the Court.

Thereupon the Court overruled and denied said motion for a new trial, defendants being allowed an exception to said order.

Thereupon the Court signed a decree in favor of plaintiff and ordered same filed.

Upon motion of Mr. William A. Gilmore, defendants were allowed a stay of execution for thirty days, and also thirty days in which to prepare, serve and file a bill of exceptions herein. [145]



*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Assignment of Errors.**

Come now defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, and assign the following errors upon which they will rely in prosecuting their said appeal to the Circuit Court of Appeals:

1.

That the Court erred in overruling and denying the defendants' motion for a jury trial.

2.

That the Court erred in overruling and denying the defendants' motion for an order to submit certain issues of fact raised by the pleadings to be determined by a jury.

3.

That the Court erred in overruling, refusing and denying the defendants' motion for a continuance of trial of this cause. [146]

4.

That the Court erred in overruling, refusing and

denying the defendants' motion for a change of trial Judge in this cause.

## 5.

That the Court erred in overruling defendants' objection to the use of the deposition of Andrew Jensen.

## 6.

That the Court erred in overruling the objection of the defendants to certain testimony of Jafet Lindeberg, a witness on behalf of plaintiff, as follows:

"Q. Now, why didn't you go ahead and get that patent at that time? Why didn't you go ahead with the proceedings?"

Mr. COCHRAN.—Objected to as wholly immaterial to any issue in this case.

The COURT.—Objection sustained."

Exception allowed.

"Q. Now, you knew that you could not obtain a patent—that you would have to litigate for the land in the land office—that is the true reason why you did not, is it not?"

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained."

Exception allowed.

## 7.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness L. Stevenson:

"Q. The Pioneer Mining Company owns the Jerome Fraction, does it not?"

Mr. SCHOFIELD.—Objected to as wholly immaterial, [147] irrelevant, incompetent and not cross-examination.

The COURT.—Objection sustained.”  
Exception allowed.

8.

That the Court erred in sustaining plaintiff’s objection to the following question propounded to the witness, L. Stevenson on cross-examination:

“Q. Did you sign an affidavit swearing to the work that was done on the Jerome Fraction for the year 1903?

Mr. SCHOFIELD.—Objected to as wholly immaterial, not proper cross-examination and incompetent.

The COURT.—Objection sustained.”  
Exception allowed.

9.

That the Court erred in sustaining the plaintiff’s objection to the following question propounded to the witness L. Stevenson, on cross-examination:

“Q. Now, along in 1909, along about that time, the Pioneer tried to buy this ground, Mr. Stevenson, prior to the time you brought this suit?

Mr. SCHOFIELD.—Objected to as wholly immaterial and not proper cross-examination.

The COURT.—Objection sustained.”  
Exception allowed.

10.

That the Court erred in admitting Plaintiff’s Exhibit “I” in evidence over the objection of defendants. [148]



11.

That the Court erred in permitting the witness, Arthur Gibson, on direct examination, to give hearsay evidence, over the objection of the defendants, by testifying that one C. L. Spanggard indicated and pointed out survey stakes and corners of the claim and told him certain things with reference thereto.

12.

That the Court erred in permitting the plaintiff, during the trial, to amend its complaint by interlineation, changing the description of its alleged placer claim.

13.

That the Court erred in permitting Plaintiff's Exhibit "A" to be received in evidence over the objection of the defendants.

14.

That the Court erred in sustaining the objection of plaintiff to the following question propounded by the defendants, to the witness Arthur Gibson, on cross-examination:

"Q. Now, did you ever make any other map or blue-print of the ground in controversy than the map that is upon the wall here, Exhibit 'A'?"

Mr. COCHRAN.—Objected to as not proper cross-examination.

The COURT.—Objection sustained."  
Exception allowed.

15.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to

the witness, Arthur Gibson, on cross-examination:  
[149]

“Q. And tell me if it was not a fact that Bob Lyng and Moonlight claim on the exhibit is identical with the Bob Lyng or Moonlight on this one that I hand you?

Mr. SCHOFIELD.—Objected to as incompetent and immaterial.

The COURT.—You have gone far enough. Objection sustained.”

Exception allowed.

16.

That the Court erred in refusing to admit in evidence Defendants' Exhibit 8 for identification.

17.

That the Court erred in refusing to receive in evidence Defendants' Exhibit No. 12 for identification.

18.

That the Court erred in sustaining the plaintiff's objection to the following questions propounded to the witness A. G. Kingsbury, by defendants:

“Q. And during the year 1901 that you have just detailed, the year that you built the mounds and amended the location, state whether or not any person was in the physical possession or claimed the physical possession of any of the ground claimed as marked on the ground.

Mr. COCHRAN.—Objected to as calling for a conclusion of law.

The COURT.—Objection sustained.”

Exception allowed.

“Q. Were there any stakes, mounds or monu-

ments of any character whatever, within the exterior boundaries of [150] the Grant claim indicating that anybody claimed it?

Mr. COCHRAN.—Objected to as leading.

The COURT.—Objection sustained.”

Exception allowed.

19.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness Robert Lyng:

“Q. Now, from the time that you located in 1899 up to the time in 1901 or 2, whatever time you sold to the Pioneer Mining Company, did anyone ever make any claim of any kind or character to your claim or any portion other than this claim made by Jensen to the overlap of No. 6 Good Luck?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”

Exception allowed.

20.

That the Court erred in denying the defendants' offer to prove by the witness, Robert Lyng, that no claim was ever made by the Pioneer Mining Company or its predecessors, to any portion of the Bob Lyng or Moonlight claim at any time, as follows:

“Mr. GILMORE.—I offer to show by the answer of witness, that he answered in substance that no one made any claim whatever to it, thereby including the Pioneer Mining Company or any of its officials or its predecessors.



Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial. [151]

The COURT.—Objection sustained.”  
Exception allowed.

21.

That the Court erred in sustaining the objections of the plaintiff to the following questions propounded to the witness, Robert Lyng, by the defendants:

“Q. Did anyone ever assert that they had a claim conflicting with yours up to the time you sold?

Mr. COCHRAN.—Objected to as being wholly irrelevant and immaterial.

The COURT.—Objection sustained.”  
Exception allowed.

“Q. Did anyone make the assertion to you that they conflicted with you in any way?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”  
Exception allowed.

22.

That the Court erred in sustaining the objection to the question propounded to the witness Ethel Luella Howard, as follows:

“Q. State whether or not the Pioneer Mining Company or Andrew Jensen, or D. W. McKay or anyone on their behalf, made any claim whatsoever, to any part of the ground embraced within the Grant claim during the time you had charge of it?

Mr. COCHRAN.—I object to the question,

being wholly irrelevant and immaterial.

The COURT.—Objection sustained.”

Exception allowed. [152]

23.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness Adolph Meyer:

“Q. State whether or not the wash at the bottom of the hole indicated a channel?

Mr. COCHRAN.—Objected to as incompetent and irrelevant.

The COURT.—Objection sustained.”

Exception allowed.

24.

That the Court erred in not admitting in evidence Defendants' Exhibit 41 for Identification.

25.

That the Court erred in not admitting in evidence Defendants' Exhibit 42 for Identification.

26.

That the Court erred in not admitting in evidence Defendants' Exhibit 43 for Identification.

27.

That the Court erred in not admitting in evidence Defendants' Exhibit 49 for Identification.

28.

That the Court erred in not permitting the witness, J. W. Charles, to testify in accordance with offer of the defendants, that he was an employee of the defendant McCumber and in the possession and working the ground in controversy between the months of May and July, 1911. [153]

29.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness, S. J. Bakke:

“Q. Where does the Moonlight Water Company keep its office or maintain its office in the Town of Nome?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.

Exception allowed.

30.

That the Court erred in denying and refusing the defendants' offer to prove by the witness S. J. Bakke, as follows:

“Mr. GILMORE.—I now offer to prove by the witness that ever since the year 1906, since the Moonlight Water Company was organized it had maintained its office with the Pioneer Mining Company and has been managed directly by Mr. Lindeberg, the president of the Pioneer Mining Company, through the witness as manager. I offer it for the purpose of showing that during the time of the litigation, which the plaintiff in its reply admit took place, that the Pioneer Mining Company stood by during all those years and did not assert title to the ground in controversy that was then being litigated.

The COURT.—Offer denied.”

Exception allowed.

31.

That the Court erred in not admitting in evidence



Defendants' [154] Exhibit 50 for Identification.

32.

That the Court erred in not admitting in evidence Defendants' Exhibit 51 for Identification, being a pencil sketch or map drawn by the witness, Andrew Jensen, plaintiff's locator and grantor.

33.

That the Court erred in not permitting the witness, Tom D. Jensen, to testify that he had an interest in placer claim No. 1 Bench Moonlight, the placer claim claimed by the plaintiff in this action.

34.

That the Court erred in refusing and denying the defendants' offer to prove by the witness, Tom D. Jensen as follows:

"Mr. GILMORE.—I now offer to prove by the answers to the different questions just offered and ruled out, in substance: That the witness stated he had a half interest in the claim; that he got it from his father under an arrangement with his father, the title to stand in his father's name but his father executed a power of attorney to him so he could convey it to whomsoever he pleased.

Mr. SCHOFIELD.—Objected to as not the best evidence.

The COURT.—Objection sustained."

Exception allowed. [155]

35.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness Tom D. Jensen:

“Q. Now, you never at any time you were an owner of the claim claimed that it conflicted with the Grant claim?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”  
Exception allowed.

36.

That the Court erred in not admitting in evidence Defendants' Exhibit 53 for Identification.

37.

That the Court erred in not admitting in evidence Defendants' Exhibit 54 for Identification.

38.

That the Court erred in not admitting in evidence Defendants' Exhibit 55 for Identification.

39.

That the Court erred in not admitting in evidence Defendants' Exhibit 56 for Identification.

40.

That the Court erred in not admitting in evidence Defendants' Exhibit 57 for Identification.

41.

That the Court erred in not admitting in evidence [156] Defendants' Exhibit 58 for Identification.

42.

That the Court erred in not admitting in evidence Defendants' Exhibit 59 for Identification.

43.

That the Court erred in not admitting in evidence Defendants' Exhibit 60 for Identification.

44.

That the Court erred in not admitting in evidence Defendants' Exhibit 61 for Identification.

44

That the Court erred in not admitting in evidence Defendants' Exhibit 62 for Identification.

45.

That the Court erred in not admitting in evidence Defendants' Exhibit 62 for Identification.

46.

That the Court erred in not admitting in evidence Defendants' Exhibit 63 for Identification.

47.

That the Court erred in not admitting in evidence Defendants' Exhibit 64 for Identification.

48.

That the Court erred in sustaining plaintiff's objection to the following question propounded to the defendant [157] M. D. McCumber:

“Q. Is anyone living on the ground in controversy to-day?

Mr. COCHRAN.—Objected to as wholly irrelevant and immaterial.

The COURT.—Objection sustained.”

Exception allowed.

49.

That the Court erred in refusing and denying the defendants' offer to prove by the witness M. D. McCumber, that the defendants were in the possession of the ground in controversy, as follows:

“Mr. GILMORE.—I offer to show by the witness that the witness Adolph Meyer was repre-



senting this defendant on the ground until the first day of May, 1911; that he was succeeded by J. W. Charles who lived in the red cabin on the ground in controversy until the 7th day of July, whereupon he was succeeded by Captain George Smith, who has ever since the 7th day of July, and up until the present time, and now is, living on the ground in controversy. All this evidence offered for the purpose of showing our continued possession since, at the time, and prior to the institution of this suit; and during that time we have carried on mining operations within the ground in controversy.

Mr. COCHRAN.—We object to the offer on the ground that it is wholly immaterial.

The COURT.—Objection sustained.”

Exception allowed. [158]

50.

That the Court erred in sustaining the plaintiff's objection to the following question propounded to the witness, M. D. McCumber:

“Q. Please state to the Court whether or not the Pioneer Mining Company ever, through any of its agents, attempted to buy your title to the ground in controversy, prior to the institution of this suit.

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained.”

Exception allowed.

51.

That the Court erred in overruling and denying

the defendants' offer to prove by the witness, M. D. McCumber, that the Pioneer Mining Company attempted to buy the ground in controversy as follows:

"Mr. GILMORE.—I offer to show by the witness that the Pioneer Mining Company attempted to buy the defendant's title to the ground in controversy prior to the 7th day of November, 1910, the date upon which this suit was instituted, thereby recognizing the defendant's title to the ground in controversy.

Mr. COCHRAN.—We object to the offer as irrelevant and immaterial.

The COURT.—Objection sustained."

Exception allowed.

52.

That the Court erred in overruling the defendants' objection [159] to the following question propounded to the witness, J. Allison Bruner:

"Q. State whether or not a corporation known as the Corwin Trading Co. has ever filed any articles of incorporation in the office of the clerk of the District Court, for the District of Alaska, or copies of articles of incorporation.

Mr. GILMORE.—Objected to, if the Court please, as wholly incompetent and immaterial.

The COURT.—Objection overruled."

Exception was allowed.

53.

That the Court erred in permitting the plaintiff to show the witness, J. Allison Bruner, that the defendant Pacific Coal & Transportation Company and its predecessor, the Corwin Trading Company, had

not filed articles of incorporation or designated a statutory agent.

54.

That the Court erred in admitting in evidence the Plaintiff's Exhibits "N," "O," "P," "Q" and "R."

55.

That the Court erred in overruling and denying the defendants' objections and exceptions to plaintiff's proposed findings of fact and conclusions of law, and the whole thereof.

56.

That the Court erred in refusing, overruling and denying the defendants' proposed findings of fact and conclusions of law, tendered to the Court. [160]

57.

That the Court erred in refusing to sign and file as findings of the Court, the defendants' proposed findings of fact and conclusions of law.

58.

That the Court erred in signing and filing the plaintiff's proposed findings of fact and conclusions of law over the objections and exceptions of the defendants.

59.

That the Court erred in finding that the plaintiff was in the possession of the ground in controversy at the time it instituted the above-entitled action.

60.

That the Court erred in finding that the defendants were not in possession of the ground in controversy at the time the above-entitled action was commenced.



61.

That the Court erred in making, signing and filing its finding of fact No. IV, for the reason that the same is not supported by the evidence.

62.

That the Court erred in making, signing and filing its finding of fact No. V, for the reason that the same is not supported by the evidence.

63.

That the Court erred in making, signing and filing its finding of fact No. VI, for the reason that the same is contrary to the weight of the evidence and against the evidence, [161] said finding being as follows:

“That the plaintiff, Pioneer Mining Company, was, on the 7th day of November, 1910, the date of the commencement of this action, and for a long time prior thereto had been, in the actual occupancy and exclusive possession of the whole of said mining claim, and that the defendants were not, nor were either of them, in possession of any portion of said mining claim on the said 7th day of November, 1910, nor had they or either of them been in the occupation or possession of any part of said mining claim for a long time prior thereto.”

64.

That the Court erred in making its finding of fact No. VII, for the reason that the said finding is not supported by the evidence.

65.

That the Court erred in making, signing and filing

its finding of fact No. VIII, for the reason that the same is not supported by the evidence.

66.

That the Court erred in making, signing and filing its finding of fact No. IX, for the reason that the same is not supported by the evidence.

67.

That the Court erred in making, signing and filing its finding of fact No. X for the reason that the same is not supported by the evidence.

68.

That the Court erred in making, signing and filing [162] its finding of fact No. XI, for the reason that the same is not supported by the evidence.

69.

That the Court erred in making, signing and filing its finding of fact No. XII, for the reason that the same is not supported by the evidence.

70.

That the Court erred in making, signing and filing its finding of fact No. XIII, for the reason that the same is not supported by the evidence.

71.

That the Court erred in making, signing and filing its finding of fact No. XIV, for the reason that the same is not supported by the evidence.

72.

That the Court erred in making, signing and filing its finding of fact No. XV, for the reason that the same is not supported by the evidence.

73.

That the Court erred in making, signing and filing

its finding of fact No. XVI, for the reason that the same is not supported by the evidence.

74.

That the Court erred in making, signing and filing its finding of fact No. XVII, for the reason that the same is not supported by the evidence. [163]

75.

That the Court erred in making, signing and filing its finding of fact No. XVIII, for the reason that the same is not supported by the evidence.

76.

That the court erred in overruling and denying the defendant's motion for a new trial.

77.

That the Court erred in making, signing and filing its final decree in favor of the plaintiff and against the defendants over the objection and exception of the defendants.

78.

That the Court erred in not dismissing this action for want of jurisdiction.

79.

That the Court erred in assuming and taking jurisdiction and deciding this cause on its merits.

WHEREFORE, said defendants pray that the said judgment of said District Court for the District of Alaska, Second Division, be reversed and set aside.

ELWOOD BRUNER,

Attorney for Defendant Pacific Coal & Transportation Company.

WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber.



Due service of the within Assignment of Errors is hereby acknowledged, at Nome, Alaska, by receipt of copy, this 14th day of May, 1912.

G. J. LOMEN,

Of Attorneys for Plaintiff. [164]

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co. et al., Defendants. Assignment of Errors. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Defendants. [165]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Defendant,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. Mc-  
CUMBER, JOHN DOE and RICHARD ROE,  
Defendants.

**Petition for an Order Allowing Appeal.**

Come now the defendants, Pacific Coal & Transportation Company and M. D. McCumber, and feeling themselves aggrieved by the final judgment and

decree made and entered in the above-entitled cause on the 20th day of April, 1912, in favor of the plaintiff and against the defendants, do hereby appeal from said final judgment and decree and from the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings upon which the said judgment and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that said appellants further pray for an order fixing the amount of a cost and supersedeas bond to be given by said appellants upon said appeal, and upon the giving of said supersedeas bond the execution of said judgment and further proceedings in this court, in this action, be superseded and stayed.

Dated at Nome, Alaska, this 14th day of May, A. D. 1912.

ELWOOD BRUNER,

Attorney for Defendant P. C. & T. Co.

And WILLIAM A. GILMORE,

Attorney for Defendant M. D. McCumber. [166]

Service of the above and foregoing petition for an order allowing an appeal acknowledged by receipt of a copy this 14th day of May, 1912.

G. J. LOMEN,

Of Attorneys for Plaintiff.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pa-

cific Coal & Transportation Company et al., Defendants. Petition for an Order Allowing Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. [167]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. Mc-  
CUMBER, JOHN DOE and RICHARD ROE,  
Defendants.

**Order Allowing Appeal [and Fixing Amount of  
Supersedeas Bond].**

Upon motion of Elwood Bruner, Esq., counsel for defendant, Pacific Coal & Transportation Company, and William A. Gilmore, Esq., counsel for defendant, M. D. McCumber,

IT IS ORDERED, that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment and decree heretofore filed and entered herein on the 20th day of April, 1912, be, and is hereby allowed, and that a certified transcript of the records, testimony, exhibits, stipu-



lations, motions, orders and all proceedings herein, be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit; and it is further ordered that a bond be given by the defendants to the plaintiff in the sum of Five Hundred Dollars (\$500.00), which bond shall operate as a supersedeas.

Done in open court this 14th day of May, A. D. 1912.

CORNELIUS D. MURANE,  
District Judge.

Service of the above order admitted by receipt of copy this 14th day of May, 1912.

G. J. LOMEN,  
Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a corporation, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Order Allowing Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. Vol. 9, Orders and Judgments, p. 392. [168]

*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. Mc-  
CUMBER, JOHN DOE and RICHARD ROE,  
Defendants.

**Undertaking and Order.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, the Pacific Coal & Transportation Com-  
pany, a corporation, and M. D. McCumber, as prin-  
cipals, and Fred A. Daniels and John F. Smith as  
sureties, are held and firmly bound unto the plain-  
tiff the Pioneer Mining Company, a corporation,  
above named, in the sum of Five Hundred Dollars  
(\$500.00), to be paid to the said plaintiff, Pioneer  
Mining Company, a corporation, its successors or  
assigns, to the payment of which well and truly to  
be made we bind ourselves and each of us, jointly  
and severally, and our and each of our heirs, execu-  
tors, administrators and assigns, firmly by these  
presents.

Sealed with our seals and dated this 14th day of  
May, A. D. 1912.

The condition of the above undertaking and ob-  
ligation is that,

WHEREAS, the above-named defendants, Pacific  
Coal & Transportation Company, a corporation, and

M. D. McCumber, have filed their petition for an appeal, and have taken an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and decree in the above-entitled cause, rendered by the United States District Court for the District of Alaska, Second Division, and [169]

WHEREAS, the said defendants desire to secure the plaintiff in the payment of its costs, and its costs on appeal, and desire to have execution of said judgment and all other proceedings in said action superseded and stayed pending the final determination of said action on appeal;

NOW, THEREFORE, if the above-named defendants, Pacific Coal & Transportation Company, a corporation, and M. D. McCumber, shall prosecute the said writ to effect and answer all costs and damages, if they fail to make good their plea, and shall pay or cause to be paid to the said plaintiff, its successors and assigns, all damages which it shall suffer by reason of such *supersedeas* and stay of execution, if the same should be wrongful and without sufficient cause, then this obligation shall be void; otherwise to remain in full force and effect.

PACIFIC COAL & TRANSPORTATION  
COMPANY,

By J. ALLISON BRUNER,

Attorney in Fact,

M. D. McCUMBER,

Principals.

FRED A. DANIELS,

JOHN F. SMITH,

Sureties. [170]



United States of America,  
District of Alaska,—ss.

Fred A. Daniels and John F. Smith, being first duly sworn, each for himself, deposes and says: I am one of the sureties named in the above undertaking and am a resident of the District of Alaska; that I am not an attorney at law, marshal, deputy marshal, clerk of any court or other officer of any court, and am worth the sum of Five Hundred Dollars (\$500.00), in property exempt from execution, over and above all just debts and liabilities.

FRED A. DANIELS.

JOHN F. SMITH.

Subscribed and sworn to before me this 14th day of May, 1912.

[Notarial Seal] WILLIAM A. GILMORE,  
Notary Public in and for the District of Alaska.

**Order [Approving Supersedeas Bond].**

The above and foregoing Supersedeas and Cost Bond is hereby approved this 14th day of May, 1912, and execution and all further proceedings in said action are superseded and stayed pending the final determination of this action.

CORNELIUS D. MURANE,  
District Judge,

Rec'd copy May 14th, 1912.

G. J. LOMEN,  
Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Co., a Corporation, Plaintiff, vs. Pacific Coal

& Transportation Co. et al., Defendants. Undertaking. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. [171]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Order Designating Place of Trial.**

Upon application of Elwood Bruner, Esq., attorney for defendant Pacific Coal & Transportation Company, and William A. Gilmore, Esq., attorney for defendant M. D. McCumber, and for good cause shown,

IT IS ORDERED that this cause be heard on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of Seattle, in the State of Washington, which said place for the said hearing of said appeal, is by this order hereby fixed and determined.

Done in open court this 14th day of May, A. D.  
1912.

CORNELIUS D. MURANE,  
District Judge.

Rec'd copy May 14th, 1912.

G. J. LOMEN,  
Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co. et al., Defendants. Order Designating Place of Trial. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. Vol. 9, Orders and Judgments, p. 394. [172]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.



**Order Enlarging Time to File Record.**

On motion of Elwood Bruner, Esq., attorney for the defendant Pacific Coal & Transportation Company, and William A. Gilmore, Esq., attorney for defendant M. D. McCumber, and good cause appearing to the court therefor;

IT IS NOW HEREBY ORDERED that the time for filing and docketing the transcript and record in the above-entitled cause, in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, is hereby extended to and until the first day of September, 1912.

Done in open court this 14th day of May, A. D. 1912.

CORNELIUS D. MURANE,  
District Judge.

Rec'd copy May 14th, 1912.

G. J. LOMEN,  
Of Attys. for Plf.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Co. et al., Defendants. Order Enlarging Time to File Record. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Defendants. Vol. 9, Orders and Judgments, p. 393. [173]

*In the District Court for the District of Alaska,  
Second Division.*

Cause No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, et al.,  
Defendants.

**Praecipe [for Transcript on Appeal].**

To the Clerk of the Above-entitled Court:

You will please prepare transcript on appeal in the above cause, containing Complaint, Demurrer, Minute Order Overruling Demurrer, Amended Answer of Pacific Coal and Transportation Company, Amended Answer of M. D. McCumber, Reply to Amended Answer of Pacific Coal and Transportation Company, Reply to Amended Answer of M. D. McCumber, Opinion of Court (May 27, 1911), Opinion of Court (February 5, 1912), Motion for New Trial, Minute Order Overruling Motion for New Trial, Bill of Exceptions No. 1, Bill of Exceptions No. 2, Bill of Exceptions No. 3, Court Minutes of May 20, 1911, May 27, 1911, June 17, 1911, October 26, 1911, November 4, 1911, November 6, 1911 and April 20, 1912, and Appeal Papers.

ELWOOD BRUNER,  
Attorney for Defendant Pacific Coal and Transportation Company.

WM. A. GILMORE,  
By ELWOOD BRUNER,  
Attorney for Defendant M. D. McCumber.

[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal and Transportation Company, a Corporation, et al., Defendants. Praecipe for Transcript on Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 20, 1912. John Sundback, Clerk. By J. A. B., Deputy. [174]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

THE PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Clerk's Certificate to Transcript of Record.**

I, John Sundback, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 174, both inclusive, are a true and exact transcript of the Complaint, Demurrer, Court Minutes of March 4, 1911 and of May 20, 1911, Opinion of Court filed May 27, 1911, Court Minutes of May 27, 1911, of June 17, 1911, of October 26, 1911, of October 27, 1911, of No-



vember 4, 1911 and November 6, 1911, Amended Answer of Defendant Pacific Coal & Transportation Company Amended Answer of Defendant M. D. McCumber, Reply to Amended Answer of Pacific Coal & Transportation Company, Reply to Amended Answer of M. D. McCumber, Opinion of Court filed February 5, 1912, Defendants' Bill of Exceptions No. 1, Defendants' Bill of Exceptions No. 2, Motion for New Trial, Court Minutes of April 20, 1912, Assignment of Errors, Petition for an Order Allowing Appeal, Order Allowing Appeal, Undertaking and Order, Order Designating Place of Trial, Order Enlarging Time to File Record and Praecipe for Transcript on Appeal, in the case of The Pioneer Mining Company, a corporation, plaintiff, vs. The Pacific Coal & Transportation Company, a corporation, et al., defendants, No. 2245, this court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Bill of Exceptions No. 3 in the above-entitled cause is included in said transcript as a part thereof, the original Bill of Exceptions being transmitted by stipulation of the [175] attorneys for the respective parties, and upon order of the Court; and further certify that the original Citation in the above-entitled cause is attached to this transcript.

Cost of transcript \$220.85, paid by Wm. A. Gilmore, of attorneys for defendants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 12th

day of June, A. D. 1912.

[Seal]

J. SUNDBACK,  
Clerk. [176]

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*In the District Court for the District of Alaska,  
Second Division.*

No. 2245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Citation.**

United States of America,  
District of Alaska,—ss.

The President of the United States of America, to  
the Pioneer Mining Company, a Corporation,  
Plaintiff, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty (30) days from the date of this Citation, on the 13th day of June, A. D. 1912, pursuant to an order allowing appeal entered in the office of the clerk of the United States District Court, District of Alaska, Second Division, from the final decree and judgment

filed and entered therein on the 20th day of April, 1912, in that certain suit wherein you, the said Pioneer Mining Company, a corporation, is plaintiff, and the Pacific Coal & Transportation Company, a corporation, and M. D. McCumber are defendants, to show cause, if any there be, why the said final decree and judgment rendered against said defendants as in said order allowing appeal mentioned, [177] should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 14th day of May, A. D. 1912, and of the Independence of the United States the one hundred and thirty-sixth.

CORNELIUS D. MURANE,

District Judge.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the Clerk's office at Nome, Alaska, this 14th day of May, A. D. 1912.

[Seal]

J. SUNDBACK,

Clerk of the United States District Court, for the District of Alaska, Second Division.

By J. Allison Bruner,

Deputy.

Service of the above and foregoing Citation acknowledged by receipt of copy this 14th day of May, 1912.

G. J. LOMEN,

Of Attorneys for Plaintiff. [178]



[Endorsed]: No. 2245. In the District Court for the District of Alaska, Second Division. Pioneer Mining Company, a Corporation, Plaintiff, vs. Pacific Coal & Transportation Company et al., Defendants. Citation. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy.

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PIONEER MINING CO.,

Plaintiff,

vs.

PACIFIC COAL & TRANSPORTATION CO.  
et al.,

Defendants.

**Proposed Bill of Exceptions No. 3.**

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 2, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy.

Refiled in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 14, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Vol. 9, Orders and Judgments, p. 391.  
[1]

*In the District Court for the District of Alaska,  
Second Division.*

No. 2,245.

PIONEER MINING COMPANY, a Corporation,  
Plaintiff,

vs.

THE PACIFIC COAL & TRANSPORTATION  
COMPANY, a Corporation, M. D. McCUM-  
BER, JOHN DOE and RICHARD ROE,  
Defendants.

**Proposed Bill of Exceptions No. 3.**

BE IT REMEMBERED that on the 13th day of November, A. D. 1911, the above-entitled cause came on for trial before the Honorable CORNELIUS D. MURANE, Judge of the said District Court, District of Alaska, Second Division, the plaintiff appearing by its attorneys, Messrs. O. D. Cochran, G. J. Lomen and George D. Schofield, and the defendants appearing by their attorneys, Messrs. Elwood Bruner and William A. Gilmore, and the following proceedings were had and testimony taken:

**Testimony of Arthur Gibson, for Plaintiff.**

ARTHUR GIBSON, a witness on behalf of plaintiff, being duly sworn, testified as follows:

Direct Examination.

My name is Arthur Gibson. I am a civil engineer and have been following such profession since 1889. I attended the technical institute at Stockholm, Sweden, for five years studying civil engineering, and

(Testimony of Arthur Gibson.)

graduated as mechanical and civil engineer and architect. I am a surveyor and made the plat on the wall from actual surveys. It correctly represents [1½] various lines and objects as represented upon the plat from actual surveys.

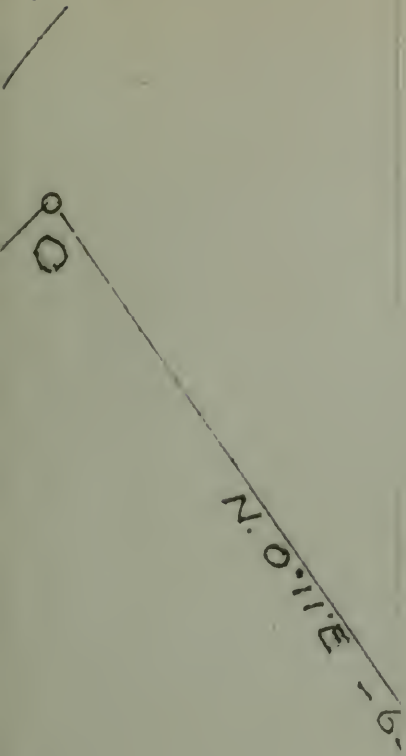
Mr. COCHRAN.—I ask to have the map marked for identification.

Mr. GILMORE.—We reserve cross-examination until such time as they attempt to offer the map in evidence.

The COURT.—Very well.

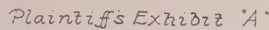
(Map is marked Plaintiff's Exhibit "A" for identification. Said exhibit being as follows:) [2]







Scale 1 in. = 400 ft.  
< Enlarged to 200' = 1" >







Mr. COCHRAN.—We offer the deposition of Andrew Jensen taken by the defendants in this case.

Mr. GILMORE.—If the Court please, the defendants make objection to the use of that deposition because they have had no opportunity whatever to cross-examine the witness. The exhibits upon which the witness testified were surreptitiously handed to the witness without cross-examination or a chance for cross-examination by the attorneys for defendants in this law suit, and a glance at the deposition by the Court will show that the witness testified almost from the first question to the last, with an exhibit before him which was surreptitiously handed to him back in North Dakota, without being exhibited to the defendants, and the witness interjected some remarks about the map in almost every answer he made, and for that reason the deposition is incompetent, irrelevant and immaterial.

The COURT.—The objection to the deposition is overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

### **Deposition of Andrew Jensen, for Plaintiff.**

My name is Andrew Jensen. I am 60 years of age. A [4] farmer and I live six miles south of Buf. Cass County, North Dakota. Have resided in this vicinity since 1879. I was in the Nome mining district in the winter of 1899 and 1900. I came out in the fall of 1900. I made some mining locations in the vicinity of Anvil Creek and Moonlight Creek

(Deposition of Andrew Jensen.)

during that time. I staked out No. 6 below Good Luck on Anvil Creek and also then I staked Bench No. 1 on Moonlight. The No. 6 Below Good Luck claim was made January 1st, 1899. I am pretty sure it was the first of January, either the first or second of January. There was a man by the name of Otto Schueler and C. L. Spanggard. I cannot say the size of this claim because it was fractional on account of striking the Moonlight claim. No. 1 Below joined it on the west that was Jafet Lindeberg's claim. Lyng's Moonlight claim was on the east. I recorded the location certificate in the Nome recorder's office within a week or two after I staked the claim. So far as I can remember, the instrument handed to me marked Exhibit "A" to this deposition, is a correct copy of the location notice that I recorded on the date given, the 17th of January, 1899. Otto Schueler and C. L. Spanggard were with me when I staked Bench No. 6 Good Luck. At the time I staked said placer claim No. 6 Good Luck, I knew the placer claim known as Moonlight claim, also called the Bob Lyng claim, and was familiar with its boundaries. My placer claim No. 6 Below Good Luck, when I staked it, did not in any way conflict with the exterior boundaries of the Lyng claim or Moonlight claim. I performed work and labor on Bench claim No. 6 Below Good Luck. Sometime in February I sunk a shaft on it to bedrock. I think I talked to Jafet Lindeberg. He talked to me several times. He came by while I was working on the claim and Otto Schueler also came up and talked to



(Deposition of Andrew Jensen.)

me while I was working there. The map Exhibit "C" (Plaintiff's Exhibit "B") is not a correct representation of the claims as I staked them. I know it is not therefore I cannot locate the position where I did work on that map. I sunk a shaft not very far from [5] the westerly line of the claim. I located the claim called Bench No. 1 Moonlight in the vicinity of the Moonlight Creek in the Cape Nome Mining District, either the second or third of January, 1899; it ran between Lyng's Moonlight claim on the west and Nelson's on the east, and runs up towards Anvil Mountain, not very far from the base of the mountain nearer to Anvil Mountain than Lyng's Moonlight claim. I filed a location certificate of said claim in the Cape Nome Mining and Recording District. I think there is a mistake in Exhibit "B" in saying that it is bounded on the east by Moonlight claim. This must have been made in the recorder's office or else we made a mistake when we wrote it out. I was not familiar with the placer claim known as No. 2 Moonlight, called Lindbloom's claim, at the time I staked Bench claim No. 1 Moonlight. My Bench claim No. 1 Moonlight joined the Bob Lyng or Moonlight claim on the east and extended along the easterly side of Robert Lyng's claim and further up towards Anvil Mountain than Lyng's claim, and it extended east from Lyng's claim towards the Nelson claim. At the time I was prospecting and staking in the vicinity of Moonlight Creek and Anvil Creek, I was familiar with the creek called Little Creek. As far as I remember my Bench

(Deposition of Andrew Jensen.)

No. 1 Moonlight did not extend lengthwise towards the said Little Creek. The west side of my Bench Claim No. 1 joined Lyng's claim as near as I remember; and extended northerly towards Anvil Mountain. I was acquainted with Otto Schueler and C. L. Spanggard at Anvil and Moonlight Creeks in January, 1899. They were present and assisted me in making the location. I did not know anything about the Lindbloom claim but my Bench No. 1 Moonlight joined the eastern side of the Moonlight claim. The west side of my claim run along the easterly side of Robert Lyng's claim. To a certain extent the Moonlight claim or Bob Lyng claim, lay [6] between my two claims, Bench claim No. 6 Below Good Luck and Bench No. 1 Moonlight, staked by me. At the time I staked my two claims, No. 6 Good Luck and No. 1 Bench Moonlight, their exterior boundaries as marked by me on the ground, did not in any way conflict with the Bob Lyng or Moonlight claim. Otto Schueler and C. L. Spanggard helped me mark the boundaries because we had quite a bit of trouble in locating the stake on the Moonlight claim and also on the Nelson claim. I performed labor and made improvements on Bench No. 1 Moonlight claim either in February or March, 1899. Otto Schueler was there several times and I am sure Lindeberg was there several times while I was working and he came by and walked over to his claim I think Dr. Kittlesen was there several times and they came walking by there occasionally. I made a discovery of gold on Bench No. 1 Moonlight. I

(Deposition of Andrew Jensen.)

found gold there at the time I staked it out. It was on the upper part of the claim in the willows. There was a place where it was not frozen much. I do not remember if Otto Schueler was present or not; I remember showing him gold.

I am acquainted with Jafet Lindeberg, the president of the Pioneer Mining Company, and I have known him since January, 1899; I met him up on Anvil Creek and he told me which way to stake No. 6 Good Luck on Anvil Creek. He advised me to run it up towards the mountain. I discussed the said claims with him on the claims and later in Nome and asked him if he would not buy No. 6 Good Luck on Anvil Creek. That was in the summer of 1899; I think I talked with Lindeberg while I was working within the boundaries of No. one Bench Moonlight.

Q. State whether or not you have discussed the position and location of said Bench No. 1 Moonlight with any person or persons on behalf of the plaintiff, Pioneer Mining [7] Company in this action, since this suit was instituted, November 7th, 1910, and if so whom and where?

A. I discussed it only with Mr. Holt in August, 1911. He came out to my farm.

I was acquainted with one W. N. Grant. I knew him quite well, we lived close together in Nome. I assisted him in locating the claim known as the Grant claim near Moonlight. I went over with him and showed him the two claims I had staked. I witnessed the location of his claim; the claim he staked at that



(Deposition of Andrew Jensen.)

time. I have examined Exhibit "D" to this deposition and I recall signing the original statement but cannot be positive about the wording. Grant just put in one willow stake right up by the side of one of mine on No. 6 Good Luck—on the upper part towards the mountain.

I used willow stakes about four or five feet long and two or three inches in circumference. I cut off one side with an ax and wrote with a lead pencil Bench No. 1 Moonlight on each corner stake, and on one of them I put the location notice by splitting it on top and putting the location notice in the split.

Q. The location certificate above referred to describes the said Grant claim as lying adjoining the east end of the Bob Lyng claim and running up towards Anvil Mountain. Please state whether or not the said Grant claim was staked and marked on the ground as joining the east end of the Bob Lyng or Moonlight claim.

A. As I remember it Grant's claim could not join Lyng's except possibly on one corner.

I don't know whether Grant made a discovery of gold within the exterior boundaries of his claim as marked on the ground or not. Of my own knowledge I do not know whether or [8] not he ever discovered any gold nor do I know that Grant ever performed any work upon his claim.

Q. According to the location certificate of Bench claim No. 1 Moonlight and the Grant claim, the said Grant claim was located six days after the location of Bench No. 1 Moonlight. Please state whether or

(Deposition of Andrew Jensen.)

not said Grant claim as located and marked on the ground at the time of its location, embraced within its exterior boundaries any of the ground as marked by you within the exterior boundaries of the Bench No. 1 Moonlight.      A. It did not.

Q. State whether or not the placer claim located by W. N. Grant on the 9th day of January, 1899, in any way or manner whatever, conflicted with the exterior boundaries of the Lyng claim or Moonlight claim, or with Bench No. 1 Moonlight.

A. I know it could not conflict because Grant staked it with reference to the other claims and we could see the stakes of the other claims.

I recall fairly well the surface marks of the ground in the locality of Moonlight Springs, and fairly well recollect the surface conditions of that vicinity as it was represented in January, 1899. There was some flat ground between Grant's location stake and the base of the mountain—Anvil Mountain—but not a great deal. Then, it ran up the side of Anvil Mountain because I remember asking him why he wanted to stake the claim in that way, and he said there might be some gold up in the mountain. On January 9, 1899, when the Grant claim was staked it included a little flat ground between Grant's stake and the mountain—Anvil Mountain—not very much a couple of hundred feet possibly, I can't remember that. I [9] sold a half interest in my claim to a United States custom officer by the name of Hatch—that was in the winter of 1899, the other half was sold by my son. I don't know anything about it—

(Deposition of Andrew Jensen.)

I think he sold it—I am sure he did; I don't know when. He had my power of attorney. I don't know to whom my son sold the other half.

Q. Please state whether or not at all the times you were the owner of said Bench No. 1 Moonlight claim, you ever at any time claimed that the exterior boundaries of said Bench No. 1 Moonlight embraced or included any of the ground of the Bob Lyng or Moonlight claim, or the said Grant claim, as shown on Exhibit "C" to this deposition. A. I never did.

Q. Please carefully examine Exhibit "C," the plat attached to these interrogatories, and state whether or not placer claims Bench No. 6 Below Good Luck, the Grant claim, the Lyng or Moonlight claim, No. 2 Moonlight or Lindbloom claim and Bench No. 1 Moonlight, as shown on said map, approximately represent the relative and original positions of said claims as staked and marked on the ground at the time they were located.

A. They do not; not on that map. So far as I can see they are altogether wrong.

Cross-examination of ANDREW JENSEN, Offered  
by Plaintiff.

Q. At or about the time you located the No. 1 Bench Moonlight, did anyone locate a claim immediately to the east of your said location, and if so, who?

A. They did not because the Nelson claim was located east of Bench No. 1 on Moonlight when I located that claim. [10]

My Bench No. 1 Moonlight joined Nelson's claim on the western side of the Nelson claim; they did not



(Deposition of Andrew Jensen.)

have any common corners; I don't believe they had any common corners. My upper stakes on Moonlight were higher up towards the mountain than any of those. I was not acquainted with Nelson who located the Nelson claim. Nelson's claim was east of mine or easterly, not just exactly east, but easterly. My claim joined his on the western side. I did not know Elizabeth Carlson. I don't know what claim she located in that vicinity. I don't think my Bench No. 1 Moonlight and the Bob Lyng or Moonlight claim had any common corners. My claim ran along the east side of his but further up towards Anvil Mountain—extended further up towards Anvil Mountain so they did not have any common corners. The Grant claim and my Bench No. 1 did not have any common corners. A part of the Grant claim might lie between the upper end of my Moonlight claim and the Anvil Mountain. Grant placed one middle stake at one of my corners towards Anvil Mountain on the upper side of No. 6 Good Luck. Otto Schueler located a claim on Little Creek or rather just above Little Creek and Spanggard east of Otto Schueler. I helped C. L. Spanggard to locate a claim right east of Otto Schueler on Little Creek; it did not have any common corners with the Nelson claim, it was further east. I could not say whether I knew a claim called Bench No. 1 first tier right limit of Little Creek or not. I witnessed Spanggard's location but I cannot remember. I was not acquainted with No. 2 Moonlight or the Lindbloom claim—my Bench No. 1 Moonlight had no common corner with the No. 2 Moonlight claim that I know

(Deposition of Andrew Jensen.)

of. At the time I located No. 1 Bench Moonlight, I marked the claim on the ground by putting a stake in each corner, there were four stakes; I would say about four or five feet long and two or three inches in circumference. They were willow stakes. They were marked with a lead [11] pencil. I squared one side of them with an ax and marked them Bench No. 1 on Moonlight and on one of them I put the location notice. I posted a location notice on one of the corner stakes by splitting it in the top and sticking a notice down. It was recorded in the recorder's office at Nome. I did find gold there when I was looking over the ground. I struck a piece of soft ground right close to some willows, and I dug down and took some dirt to the tent and washed it and found gold.

The discovery of gold that I found warranted me in further prospecting and developing said claim as a placer claim.

Q. Did you, subsequent to the location of Bench No. 1 Moonlight, reset the stakes or further mark the claim on the ground? A. I did not.

Q. If you signed the notice of location made by W. N. Grant as a witness to said location notice, when, where and under what circumstances did you sign the same?

A. Yes, I signed it right on the place where he put down the stakes when the location was made.

I asked him why he wanted to stake the claim up on the side of the mountain, and he said there might be gold up there. Grant was the only one present, I remember, still Otto Schueler might have been there. The conversation was had right on the place where

(Deposition of Andrew Jensen.)

we put down the stake. I did not know where the exterior boundaries of the Grant claim were because he only put down one stake; he said that was enough. I did not at any time abandon or intend to abandon, any part or portion of the No. 1 Moonlight.

Q. Did you at any time change the boundaries of said claim? (Bench No. 1 Moonlight.)

A. I never did. [12]

Q. Did the Grant claim at any time, to your knowledge, overlap the No. 1 Bench Moonlight, if so, state when you first discovered such overlap, and to what extent it overlapped?

A. It did not to my knowledge. I never discovered it because I left in the fall of 1900.

Q. By whom and how was your attention first called to any conflict between the Grant claim and the No. 1 Bench Moonlight, and what, if anything, did you do about it?

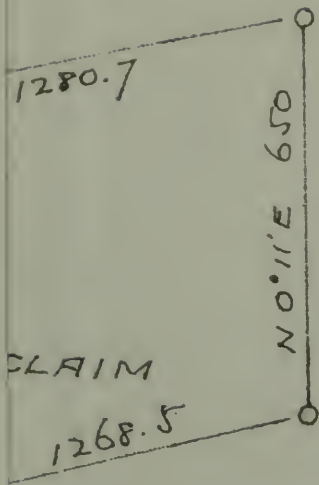
A. About five years ago a representative of an eastern company came to my place in Buffalo, N. D., with a map something like the one I have before me and wanted me to give him the location of the Grant claim as near as I remember it, and I told him all about it as near as I remembered it. I do not know who the man was. The first I ever heard of it was in a letter from my son Tom, he mentioned it was in litigation.

Mr. COCHRAN.—This is the original blue-print attached to the deposition of Andrew Jensen which we now offer in evidence. He has testified in relation to the same.

The COURT.—Yes; let it be marked Plaintiff's Exhibit "B." (Said exhibit being as follows:) [13]







of Moonlight Creek

Little Creek

Plaint







Antine's Exhibit 'B'



(Deposition of Andrew Jensen.)

(Witness continuing:) I meant by my location notice it was bounded to the N. W. by Lyng's Moonlight claim and on the east by Nelson's claim. I think there must have been a mistake in the notice or else by the recorder in copying.

If this copy is correct, I think there must have been a mistake in describing the claim which bordered it on the east. It should have read bordered on the east by Nelson's claim. The location does bear the true date of the location of Bench No. 1 Moonlight. I last saw the stakes in the summer of 1900; I saw the two upper stakes on my Moonlight claim, I am positive about that. The northwestern corner stake was some north of the Moonlight claim, or northerly I would say, about on a line with the east side of Lyng's Moonlight claim. The northeast corner stake was a little north of the Nelson claim—northwest and about on a line with the west side of Nelson's claim. When I last saw them in 1900 they were in the position as when I first staked them out. The initial stake of the Grant claim was placed on one of the corners, the upper corner of No. 6 Good Luck, right opposite one of my stakes—which corner I am not positive. It was a center stake. The initial stake of No. 1 Bench Moonlight was a corner stake. Referring to the map, Exhibit "C" attached to my deposition, my Bench No. 1 Moonlight was right east from the Moonlight Springs and dam.

Q. Did your said No. 1 Bench Moonlight as marked on the ground take in any of the springs, if so, were such springs above or below the dam?



(Deposition of Andrew Jensen.)

A. No, it did not, but No. 6 Good Luck did.

The upper end stakes of my Bench No. 1 Moonlight were a little nearer to Anvil Mountain than the upper end stakes of the Nelson or Carlson claim; they were up on the bench above the willows. The upper end stakes of my Bench No. 1 Moonlight were nearer to Anvil Mountain than the stakes of the Moonlight or Lyng claim. There was six inches to a foot and a half of [15] snow in places when we staked Bench No. 1 Moonlight and about the same amount of snow when No. 6 Good Luck was staked, and also when the Grant claim was staked. The several claims were staked in the daytime and I would say between ten and four o'clock.

When I staked No. 1 Bench Moonlight, Robert Lyng's stakes on his Moonlight claim were visible and the location stakes of the Nelson on the east. When I saw the stake on No. 6 Good Luck, Robert Lyng's on Moonlight were visible; I also saw the stakes of No. 1 Below on Anvil Creek belonging to Lindeberg. When the Grant claim was staked, all the stakes of No. 6 Below Good Luck and also the upper stakes of Robert Lyng's on Moonlight and the two upper stakes of Bench No. 1 on Moonlight owned by me were visible. At the time I staked Bench No. 1 Moonlight, as far as I remember there was six stakes marking the Moonlight or Bob Lyng's claim. Only one stake marked the Grant claim at the time of its location. I do not know anything about the east fork of Moonlight. My Bench No. 1 on Moonlight took in all the willows; there was not any wil-

(Deposition of Andrew Jensen.)

lows between my stakes and the base of Anvil Mountain; there were no willows on the Grant claim that I remember; there might have been a few, possibly. There was some willows around the Moonlight Springs and also a little above the Springs; that is, in a northwesterly direction toward the mountain. The willows were visible at the time of the location of these claims.

Q. In what direction with reference to Anvil rock, did the lengthwise center line of No. 1 Bench claim run?

A. I would say it run southerly and that the Anvil rock was northerly above.

Q. In what direction with reference to Anvil rock did the [16] lengthwise center line of the Grant claim run?

A. I would call it northwesterly as far as I could remember.

#### Redirect Offered by the Plaintiff.

The first map I saw was from an eastern representative of an eastern firm who showed me a map and talked to me about the location of the Grant claim. The next was last August when Mr. Holt from Fargo, N. D., came to my place and showed me a map and wanted me to look it over and see if I thought it was nearly correct, and asked me to mark out on the map where those claims were originally located. I pointed out on the map where I thought the claims were originally located, just about as I have marked it in my testimony. I told Mr. Holt the Grant claim looked to me to be too far east. It

(Deposition of Andrew Jensen.)

should have laid more to the west of its location, as shown on the map, Exhibit "E." I got this map, Exhibit "E," from Mr. Holt.

(Recital:) Said exhibit "E" was marked Plaintiff's Exhibit "J" for identification and is similar to Plaintiff's Exhibit "H" for illustration.

Q. Who, if anyone, in either Fargo or Buffalo, N. D., on behalf of the plaintiff, Pioneer Mining Company, has conversed with you about or pertaining to the controversy in this action?

A. Mr. Holt has talked with me about the location of these claims but not about the controversy; that is all we ever talked about. He asked me to locate as near as I could the location of the claim, the way they were originally staked. We have never talked about anything else except that he asked me if I would go as a witness to Alaska. Mr. Holt is an attorney of the firm of Engerud, Holt and Frame, of Fargo, North Dakota, and he came out and asked me to go to Alaska as a witness. This talk took place in August, 1911. He had a map similar to this Exhibit "E." [17]

Q. When was the last time that you were on any of the claims in the vicinity of Moonlight Springs, and what examination, if any, did you make of any of the placer claims in that vicinity?

A. In September, 1900. I did not make any examination except I saw the stakes there.

Mr. GILMORE.—I offer in evidence Exhibit "A," the location notice of No. 6 Good Luck. Exhibit "B," the location notice of Bench No. 1 Moonlight,



and Exhibit "D," location notice of the Grant claim, all referred to as Exhibits "A," "B" and "D" in the deposition of Andrew Jensen.

The COURT.—They may be received subject to your proving them.

(Exhibits "A," "B" and "D" marked Defendants' Exhibits Nos. 1, 2 and 3, and are as follows:)

**Defendants' Exhibit No. 1.**

Anvil Creek, Jan. 2nd, 1899.

Cape Nome Mining Dist.

Bench Claim No. 6.

I the undersigned claim 660 feet from this state Northerly running parallel with claim No. 1 below southern side of Anvil Creek; thence easterly 1320 feet; thence southerly to Moonlight Claim; thence along Moonlight Claim to stake No. 2; thence west-erly to point of beginning.

ANDREW JENSEN.

Witnesses:

OTTO SCHUELER.

C. L. SPANGGARD.

Recorded Jan. 17, 1899, 1:15 P. M. Vol. 3-64."

[18]

**Defendants' Exhibit No. 2.**

Cape Nome Mining District.

January 3rd, 1899.

MOONLIGHT CREEK BENCH CLAIM No. 1.

I the undersigned claim 1320 feet towards Anvil Mountain and 660 feet towards Moonlight Creek, be-

ing bounded N. W. by Moonlight Claim in the east by Moonlight Claim.

ANDREW JENSEN.

Witnesses:

O. SCHUELER.

C. L. SPANGGARD.

Filed for record 1:15 P. M., Jan. 17, 1899. Vol. 3-64.

G. W. PRICE, Dept."

**Defendants' Exhibit No. 3.**

**NOTICE OF LOCATION CLAIM NO. 1 BENCH,  
CAPE NOME MING. DISTRICT.**

I the undersigned do this the 9th day of Jan. 1899, Locate and claim 20 acres of Placer mining ground on the mountain known as Anvil, described as follows:

Commencing at eastern end of Robert Lyng's MOONLIGHT Claim and extending in an easterly direction 1320 ft. & 330 ft. on each side of the center stake. This claim is located on the Western base of Anvil Mt.

W. N. GRANT, Locator.

Witness:

ANDREW JENSEN.

Filed for record 10:10 P. M., Jan. 17, 1899. (Vol. 3-59.)

G. W. PRICE, Dept."

**Testimony of F. R. Cowden, for Plaintiff.**

F. R. COWDEN, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

My name is F. R. Cowden. I am a deputy recorder of the Cape Nome Mining and Recording Dis-

(Testimony of F. R. Cowden.)

trict. I have been deputy recorder since 1906. I am the custodian of the records of real property and mining locations in this District. I have the original location notice of No. 1 Moonlight placer claim, in Vol. 3, page 64.

Mr. COCHRAN.—We offer in evidence the record of the original notice of Bench claim No. 1 Moonlight Creek, contained on page 64, Vol. 3 of the Records of this District as follows: [19]

“NOTICE OF LOCATION.

Cape Nome Mining District, Jan. 3, 1899.  
Moonlight Creek Bench Claim No. 1.

I, the undersigned claim 1320 feet toward Anvil Mountain and 660 feet toward Moonlight Creek, being bounded N. W. by Moonlight Claim, in the east by Nelson's Moonlight Bench Claim.

ANDREW JENSEN.

Witnesses:

O. SCHUELER.

C. L. SPANGGARD.

Filed for record 1:15 P. M., Jan. 17, 1899.

G. W. PRICE, Deputy.”

Cross-examination.

I heard Mr. Cochran read the notice. He read it with the notations which had been put in with lead pencil—the word Nelson's.

Q. Is that part of the original record?

A. No, I wouldn't consider it. I didn't consider it was when I made the certified copy. I saw that notice a long time ago. Several times. That lead pen-



(Testimony of F. R. Cowden.)

cil mark has always been there.

Q. I ask you to examine that and state whether or not the pencil notation of the word Nelson's is in the original handwriting.

A. It is not. (Continuing:) I am familiar with the handwriting of G. W. Price, who was deputy recorder in the earlier times.

Q. Will you state to the Court if from your experience with his writing in this particular book, whether or not the word "Nelson's" written in pencil is in Mr. Price's handwriting or not?

A. No, it is not.

#### Redirect Examination.

I know that Dr. Kittleson was recorder at the time but I could not state whether that is Kittleson's writing or not. He had quite a number of deputies.  
[20]

#### Testimony of Louis Stevenson, for Plaintiff.

LOUIS STEVENSON, a witness on behalf of plaintiff being duly sworn, testified as follows:

Q. Examine the record which I hand you, Mr. Stevenson, being page 64, Vol. 3, of the records of the Cape Nome Mining Precinct, the record of a mining location. I particularly call your attention to some pencil writing in the notice of location of Andrew Jensen of Bench Claim No. 1 Moonlight, have you ever seen that pencil writing in that location notice, Mr. Stevenson?

A. I have. (Witness continuing:) I first noticed it there in 1903 or 1904. I think Billy Sale was in

(Testimony of Louis Stevenson.)

the recording office at that time, and I asked him whether that belonged to it; that was in 1903 or 1904. I had nothing to do with that entry. That was shortly after the Pioneer Mining Company completed its deal with McKay.

Mr. COCHRAN.—I offer in evidence certified copy of power of attorney from Andrew Jensen to E. T. Hatch of a half interest in Bench claim No. 1 on Moonlight, located January 3, 1899. The deed includes other property also.

Mr. GILMORE.—We have no objection. We now stipulate that the Jensen record title to Bench claim No. 1 on Moonlight is in the plaintiff.

The COURT.—It may be received and marked Plaintiff's Exhibit "C."

Mr. COCHRAN.—I now offer in evidence deed from E. T. Hatch to D. W. McKay, certified copy of the record, of his interest in Bench No. 1 Moonlight dated July 8, 1901.

Mr. GILMORE.—No objection. [21]

The COURT.—It may be received. Marked Plaintiff's Exhibit "D."

Mr. COCHRAN.—I now offer in evidence certified copy of power of attorney from Andrew Jensen to Thomas D. Jensen, dated August 20, 1900.

Mr. GILMORE.—No objection.

The COURT.—It may be received and marked Plaintiff's Exhibit "E."

Mr. COCHRAN.—I offer in evidence certified copy of record of deed dated July 30, 1902, Andrew Jensen to D. W. McKay, of all his right, title and

interest in Bench claim No. 1 on Moonlight Creek and other claims, executed by Thomas Jensen as attorney in fact, together with the notations.

Mr. GILMORE.—No objection.

The COURT.—It may be received and marked Plaintiff's Exhibit "F."

Mr. COCHRAN.—I now offer in evidence certified copy of the record of a deed from D. W. McKay to the Pioneer Mining Company, dated September 16, 1903, conveying Bench claim No. 1 on Moonlight Creek.

Mr. GILMORE.—No objection.

The COURT.—It may be received and marked Plaintiff's Exhibit "G."

Mr. COCHRAN.—I now offer in evidence the deposition of Jafet Lindeberg on behalf of plaintiff, with the stipulation.

Mr. GILMORE.—The stipulation was in effect that we [22] might make any objections except as to the form of the question, at the time of the offer during the trial.

### **Deposition of Jafet Lindeberg, for Plaintiff.**

My name is Jafet Lindeberg. I have been living in the District of Alaska since 1898. I am president of the plaintiff, Pioneer Mining Company, and know a placer claim called Bench No. 1 Moonlight Creek, the claim that the plaintiff asserts title to in this action. I first became acquainted with the claim in 1899. The plaintiff acquired title to that claim in



(Deposition of Jafet Lindeberg.)

1903 to the best of my recollection, by purchase from D. W. McKay. The consideration was five thousand dollars paid to D. W. McKay. The Pioneer Mining Company had an option on this claim prior to the time of purchase. They acquired the option to purchase the claim in the fall of 1901 or spring of 1902, I don't remember which, and the purchase was made in the exercise of that option. I do not think I was on the ground with McKay. I was on the other side of Moonlight with him. We had another claim on the other side which McKay also owned and which we had an option on. That was No. 6 Good Luck. Mr. McKay showed me a plat of the claim. We may have a plat in the vault of the company; I have not looked for it. I think the original plat was made by a man by the name of Monroe but the second plat was made by Gibson. I think that plat was made in 1901, I am not quite certain. I am familiar with the claim as its boundaries are now marked. To the best of my recollection the boundaries are the same now as they were at the time the plaintiff purchased the claim. I know Andrew Jensen. I first knew him in Nome in the winter of 1898 and 9 and since. [23] Andrew Jensen located the claim in January, 1899, I believe it was. I saw Jensen working on there in 1899 on this claim, and I talked with him.

Mr. COCHRAN.—I ask leave to detach the map from the deposition.

The COURT.—It may be detached.

Mr. COCHRAN.—I now offer the map in evidence.

Mr. GILMORE.—I object on the ground that it

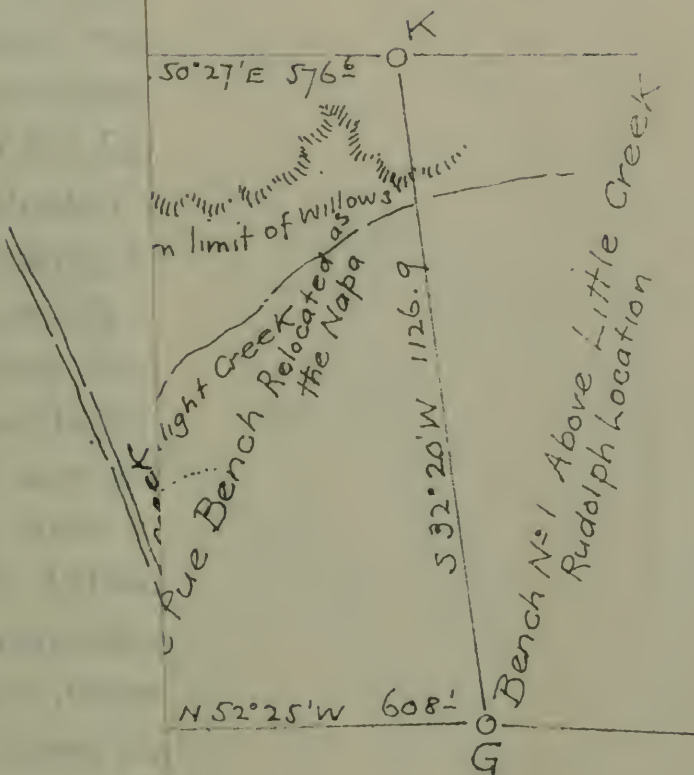
(Deposition of Jafet Lindeberg.)

has not been proven.

The COURT.—It may be received for the purpose of illustration and proven later.

(Admitted for illustration and marked Plaintiff's Exhibit "H.")

(Said exhibit being as follows:) [24]



Surveyed in 1901 and 1902  
by Arthur Gibson C.E.  
Nome, Alaska.

Plaintiff

Scale 1" = 400 ft.











(Deposition of Jafet Lindeberg.)

(Witness continuing:) I saw Jensen working on this claim in the latter part of May, 1899. To the best of my recollection it was about the time of the break-up. He was working close to the east line of the claim, or about the middle as to the north and south of the claim, as now marked. He was sinking a shaft. I had a conversation with him at that time. I think Alfred Nillima was with him and another man that used to carry the mail up north—I think his name was Johansen Stallagro. I know where the northeast corner stake of a claim called No. 2 Bench of the Left Fork of Moonlight is now situated, being situated on No. 1 Bench Moonlight. Jensen was sinking a shaft when I saw him in the spring of 1899, possibly one hundred to one hundred and fifty feet from the line to the west or northwest rather, and northeast of the northerly end of Moonlight claim. I now designate the point with the letter “A” with a circle around it, upon the map of a survey made by Arthur Gibson in 1901 or 2, handed to me, which approximately represents [26] the place where I saw Jensen sinking that shaft. The shaft that I saw Jensen sinking was within the boundaries of Bench claim No. 1 as it is now designated and marked.

Cross-examination.

Q. You don't claim to know anything where the claim was originally located of your own knowledge, do you?

A. Not with the exceptions of where I saw Jensen working.

(Witness continues:) I was not there when Jen-

(Deposition of Jafet Lindeberg.)

sen located the claim in 1899. As a matter of fact, all I know about it is what McKay told me and he showed me a plat of the survey of the claim, as he claimed it in 1901 or 1902, and then afterwards sold it to me. This bench claim is generally known as No. 1 Bench while the Good Luck, or No. 6 Bench is sometimes known as the McKay Bench, I believe. I contracted with a mineral surveyor, E. Franklin Lewis, to make a survey of the ground for patent, either in 1903 or 4, I don't remember. He made a survey I believe. I do not know that because I was not with him. I just instructed him to survey the claim. I don't think that we ever claimed that the northwest corner of Bench No. 1 was identical with the southeast corner of No. 6 Good Luck, Mr. Lewis may have made a mistake in surveying, I don't remember as to that, but I am sure we never claimed that. I have not examined his survey that he filed in the land office.

Q. Now, why didn't you go ahead and get that patent at that time? Why didn't you go ahead with the proceedings?

Mr. COCHRAN.—Objected to as wholly immaterial to any issue in this case.

The COURT.—Objection sustained.

To which ruling of the Court the defendants then and there excepted and the exception was allowed.  
[27]

Q. Now, you knew that you could not obtain a patent—that you would have to litigate for the land in the land office—that is the principal reason why

(Deposition of Jafet Lindeberg.)

you did not, is it not?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:.) I believe in 1901 to the best of my recollection, in 1901 we had a written option from McKay to purchase the claim. I believe it was in 1903 or 4 that we completed our purchase. The option might have been in my name. I very often purchased property for the plaintiff company in my own name. If the option was in my name it was for the Pioneer Mining Company. I think the written option was in the papers that were destroyed because we took up the option by a deed later. The deed was delivered in 1903 by McKay in pursuance to a written option which stood in either my name or the company's name, from the year 1901. I do not know as I personally ever investigated the title or the boundaries of Bench No. 1. I caused an investigation of it to be made about the time and after the option was taken from McKay. We may have thought that there was some chance of an old underground channel running across the flat. I had some idea or theory that there might be.

Q. Did you then purchase Bob Lyng's Moonlight claim in 1903?

A. The Moonlight Water Company purchased two-thirds interest in the Moonlight claim and the Pioneer one-third interest.



(Deposition of Jafet Lindeberg.)

Q. The Moonlight Water Company is a partnership, is it not?

A. No, a corporation. It has since been two or three corporations. [28]

(Witness continuing:) I had some stock in the company at the time of the purchase of the Moonlight claim from Bob Lyng I had five or ten per cent of the stock at that time. I believe I had something to do with the purchase of the Moonlight claim from Bob Lyng, if I remember right. I believe that ground was purchased by Mr. Milligan—Sam Milligan, who was manager of the Moonlight Water Company, or the Nome Water Company, at that time. I believe the two claims were owned in this manner: Mr. R. T. Lyng owned one-third interest in each of the two claims—Moonlight claim and No. 2 Below; that Robert Lyng owned one-third in each claim; Lindbloom owned one-third in each of the claims. Mr. Lindbloom conveyed No. 2 below to the Pioneer Mining Company, but for some reason overlooked the fact that he had a verbal agreement with R. T. Lyng and Robert Lyng who owned that claim in common. When Mr. Lindbloom conveyed his one-third interest to the Moonlight Water Company in the Moonlight claim, R. T. Lyng and Robert Lyng, they having agreed to convey the claim to the Water Company, did not do so, but then offered to sell their interest in the Moonlight claim to the Moonlight Water Company, which offer was accepted by Mulligan, who was the manager. The Moonlight Water Company is a corporation and I own about one-fifth of it. The

(Deposition of Jafet Lindeberg.)

Moonlight Water Company at the present time is owned by myself, Mr. Lindbloom, Mr. Brynteson, Mr. Kjelsberg and Mr. W. H. Metson. They also constitute the principal stockholders of the Pioneer Mining Company. They took the Moonlight claim on a mortgage. I believe that was in 1902. The Pioneer Mining Company bought the Winter fraction in the fall of 1903. The Winter fraction covered this ground and joined the Bob Lyng claim, running down to the so-called Standard claim. I [29] knew a man named Doverspike.

Q. Do you remember of Howard and Doverspike and others working near Bob Lyng's claim, a little east of Bob Lyng's claim during the winter of 1902 and spring of 1903?

A. I found after I came in to Nome that a man by that name had been working on or near the Moonlight claim.

Q. About how far—they had taken out a winter dump had they not?

A. I think they had taken out a very small dump that winter.

(Witness continuing:) I think their dump was a couple of hundred feet off of the north end line of the Moonlight claim and within the boundaries of Bench No. 1 Moonlight, as the plaintiff has it surveyed on this plat.

Mr. GILMORE.—We next made an offer which we now withdraw.

Mr. COCHRAN.—At this time we offer the plat in evidence; they withdraw it, we offer it.

(Deposition of Jafet Lindeberg.)

Mr. GILMORE.—We object to it on the ground that it has not been proven.

The COURT.—The map may be received in evidence and marked Exhibit “H.” To which ruling of the Court the defendants then and there excepted and the exception was allowed. Said exhibit being heretofore set forth as Exhibit “H” for identification. [30]

Q. Now, Mr. Lindeberg, when was the first time that you heard of the Grant claim, that you knew there was such a claim?

A. I heard of the Grant claim in 1899 through Mr. Grant, but not this same ground. He told me he had located a claim on the Anvil hillside.

Q. Now, referring to this map here and where the surveyor [31] has the initial stake of the Grant claim at the point ‘S,’ about how far was the dump of Doverspike and Howard from this initial stake, at the point ‘S’?

A. I think that the dump had been sluiced up or done away with at the time I returned to Nome. I could not say. In the spring of 1902 or 1903.

Q. I have forgotten myself what year that was—do you remember the time the Moonlight Water Company filed an injunction suit against Doverspike and Howard? A. Yes, sir.

Q. Enjoining them from polluting the Moonlight water? A. Yes, sir.

Q. That was the spring you refer to?

A. Yes, sir.

Q. Now, if they had had a dump on the ground at



(Deposition of Jafet Lindeberg.)

that time it had been cleaned up at the time you arrived here, you say?

A. Yes. (Witness continuing:) The dump referred to was within the disputed area as now shown upon this map.

Q. Now, they afterwards sued you and your associates, did they not?

A. Yes, sir, I think they sued the Moonlight Springs Water Company.

Q. Of which you were a member?

A. Of which I was a member, yes, sir.

Q. They obtained judgment against you for damages—you appealed—the case was reversed and ordered back for a new trial—tried over again and a second judgment was obtained against you for damages. A. Yes, sir, I think that is true.

Q. The litigation ran through five or six years, did it not? [32] A. Yes, sir.

Q. And you finally paid the judgment, didn't you?

A. I don't know whether that has been paid yet or not.

Q. It is a fact however, that you did pay it—if the records show that you did?

A. Yes, sir, of course, whatever the records show in the matter. The Moonlight Springs Water Company paid it. (Witness continuing:) From 1901 to the present time I was general manager of the Pioneer Mining Company and I have been president of the Pioneer Mining Company for, since 1901, since it was incorporated.

(Deposition of Jafet Lindeberg.)

Q. Now, during the time, Mr. Lindeberg, from 1902, when Howard and Doverspike took out a dump, either you or the Moonlight Water Company, through your attorneys secured an injunction, from that time they have been suing you for damages, and up until the time the judgment was paid, if it was paid, from 1902 up until 1910, somewhere along there, the Pioneer Mining Company have never intimated that they claimed title to the ground in dispute?

A. I don't think that was ever questioned by either parties. (Witness continuing:) We have always asserted title to the ground; I don't know of any other title that was asserted in that lawsuit at all; I believe the record will show however.

Q. Did you ever, Mr. Lindeberg, at any time disturb or molest anyone working the Grant claim, within the boundaries of the Grant claim, as shown by this plat? (Exhibit "H.")

A. Not with the exception of telling them in a very nice way that we claimed that ground; that they were not doing [33] right trying to work or working that ground that we claimed. Of course, no one could hurt it very much—it was very soft.

Q. To whom did you make complaint?

A. To Bard and his lessees, one of which was Charles Butler, and Hopkins, and I believe to Mr. Grant.

Q. You knew, however, that these gentlemen were mining, taking gold out and washing up their dumps?

(Deposition of Jafet Lindeberg.)

A. I believe that all the owners of that ground that winter were outside.

Q. They were sluicing up their dumps in June, after you had returned from the outside, were they not?

A. No, there was never anybody that sluiced up except Hopkins, and I did not like to fool with that fellow very much, as he would possibly have done something violent. He might have acted pretty badly if anyone had tried to throw him off bodily. I didn't want to do that but I told him several times.

Q. Now, Mr. Muther worked on that ground too, didn't he?

A. Yes, and I told Mr. Muther several times also.

Q. Now, as a matter of fact, Mr. Muther worked on that ground several winters—two winters anyway, and took out dumps?

A. I don't remember his taking out much dumps; he prospected there several times, doing assessment work more than anything else.

Q. Well, you know he worked on that ground at various times, within the very ground in dispute?

A. Yes, sir. [34]

Q. Now, is it not a fact that the Pacific Coal & Transportation Company through its various lessees have gotten thousands of dollars out of this ground and within the boundaries of the ground in controversy?

A. Oh, no, not very much work has been done—some prospecting and assessment work.

Q. Is it not pretty well honeycombed with tun-



(Deposition of Jafet Lindeberg.)

nels, shafts and tailing piles?

A. No, sir, mostly assessment work shafts—prospecting shafts.

Q. You are not aware then, of the fact that there is an underground tunnel of over a hundred feet dug there one spring, or one winter and spring?

A. I did not know that, no, sir. (Witness continuing:) I did not know that they had been working extensively there, because I never—I never remember of seeing them sluicing or taking any pay out there.

Q. Now, is it not a fact, Mr. Lindeberg, that you never made any serious claim on behalf of the Pioneer Mining Company that you conflicted with the Grant claim, or with anyone, up to the time you brought this suit?

A. There was no one that was doing the ground any harm with the exception of a little sniping here and there occasionally.

Q. Now, is it not a fact that you never would have thought of bringing this suit until Mr. McCumber had gone out there and struck that channel of pay and was timbering a shaft down into some very rich ground, and was getting ready to mine with boiler and pumping apparatus into this rich ground? [35]

A. I don't know whether he has struck pay there or not.

Q. Mr. Stevenson went out there and panned on the ground?

A. I don't know, maybe Mr. Stevenson did so.

Q. In the very shaft that Mr. McCumber is work-

(Deposition of Jafet Lindeberg.)

ing in there now?

A. No, sir, I did not know that.

Q. Now, you know the McCumber shaft in the southwest corner of the Grant claim, about where I am indicating with my pencil on this plat (Exhibit "A ")?

A. No, I do not think that is what is called the McCumber shaft.

Q. It is the one that Mr. McCumber is timbering and getting ready to mine, is it not?

A. Yes, I believe so.

Q. Is it not a fact that Mr. Stevenson has been there at that shaft and panned several times, occasionally with Mr. McCumber, and has brought the report of the pans to you?

A. I do not know that Mr. Stevenson had ever been in that shaft or panned there.

Q. And is that not the reason for the bringing of this suit, after showing the pans or reporting the pans to the Pioneer?

Q. As I told you I did not know that Mr. Stevenson had ever been in that shaft at all, or had ever panned there.

Q. Well, did you authorize him to bring this suit, or did he bring it of his own accord?

A. I authorized him, yes, sir, to bring suit if necessary.

Q. He brought suit in November after you had left for the states?      A. I believe so. [36]

Q. Well, you know that he did bring suit in November or December after you had left for the States that fall?

(Deposition of Jafet Lindeberg.)

A. I said, yes, I believe he brought suit sometime about that time, after I had gone outside.

Q. You knew at the time you authorized him to bring this suit that McCumber and men were moving upon the ground, mining within the disputed area, or conflicting area did you not?

A. I did not know that anybody was living on the ground. In fact I did not think that there was anyone ever on the ground with the exception of this summer.

Q. Well, you know where the McCumber cabin is, do you not? The red cabin on the brow of the hill, just about this point here (indicating on Exhibit "H")?

A. There are a number of cabins, or have been a number of cabins there at different times, I believe.

Q. But this particular cabin, this red cabin about here, on the brow of the hill?

A. There is a cabin there but I don't know whose cabin it is. (Witness continuing:) It is a red cabin but I have never paid any particular attention to any cabins there and I could not tell you when I first saw that cabin. There was nobody working on the claim before I went outside so far as I could tell.

Q. Did Mr. Stevenson wire you any information before you authorized him to bring suit?

A. He wired me that somebody had been on No. 1 Bench.

Q. He told you that they were digging a shaft there and were down into pay, didn't he?



(Deposition of Jafet Lindeberg.)

A. I don't remember what the words of the wire were.

Q. Have you a copy of that telegram that Mr. Stevenson sent you? [37]

A. I don't know whether I have or not.

Q. Where would you be liable to find it—in the files of the Pioneer Mining Company or in your own private papers?

A. I was in San Francisco at the time, if it is there yet I don't know, but if we have the wire it is in San Francisco.

Q. Does Mr. Stevenson keep a copy of all the telegrams he sends to you during the winter time?

A. I think he does, but I am not certain.

Q. But he wired you that somebody was digging a shaft—did he say McCumber?

A. I don't remember that.

Q. But he wired you that somebody was digging a shaft? A. Yes, sir.

Q. And you wired back to bring suit?

A. He had his instructions prior to my wiring.

Q. Did you wire him at that time?

A. I think I told him to bring a suit.

Q. Did you tell him what kind of a suit to bring?

A. I did not.

Q. Did you talk with anybody, with Mr. Metson or anybody else about what kind of a suit to bring, before you left, or at any time before suit was brought? A. I did not.

Q. Had you been talking to Mr. Metson before that as to what kind of a suit to bring?

(Deposition of Jafet Lindeberg.)

A. I don't remember as to that, I believe I showed Mr. Metson the telegram.

Q. Did you take the telegram that Mr. Stevenson sent you and show it to Mr. Metson?

A. I believe I did. [38]

Q. Did you send any telegram back to Mr. Stevenson?

A. I sent one telegram—he may have sent—

Q. No, I mean did you send a telegram back to Mr. Stevenson in answer to this one about this particular claim? A. Yes, sir.

Q. What did you say to him?

A. Consult a lawyer.

Q. Did you tell him what lawyer?

A. I don't know as I told him in the telegram what lawyers.

Q. Give me the substance of the message as near as you can recollect it, it was not so very long ago, about the last of October or November, something like that?

A. I think the telegram read something like this: "Prevent parties from working on Bench No. 1; consult attorneys "and something like" bring suit if necessary."

Q. How long was that after you had left Nome?

A. A month or so; a month and a half, I believe. (Witness continuing:) I left Nome about the middle of October. I don't think Mr. Stevenson informed me in the telegram that the party sinking on the claim had pay. I don't think he gave me any information about what they were doing or

(Deposition of Jafet Lindeberg.)

about the kind or character of the ground they had uncovered.

Q. Now, why didn't you bring this suit against the owners of the Grant claim people before, in 1903, when you first bought this title?

A. There was nobody molesting the claim at that time.

Q. They were working on there, were they not?

A. Yes, assessment work, they were mainly assessment work and nothing else, once in a while there might have been someone rocking, or maybe a little sniping, nothing serious. [39]

Q. Didn't they take out a dump or dumps and sluice them afterwards?

A. Once in a while rocked, I believe, I don't think anyone ever did any sluicing on that ground.

Q. As a matter of fact didn't they take out a dump in the winter of 1902 and 3?

A. We didn't have the deed then, in 1902.

Q. As I understand you you had an option, perfected later by a deed? A. Yes, sir.

Q. Now, at that time, in 1902 and 1903 they took out a dump and you enjoined them from sluicing up, and they afterwards got a judgment against you and the Moonlight Water Company, for \$2,500, did they not?

A. I don't think that they took anything out of their dump. I don't think there was fifty dollars worth of gold in their whole dump. In fact, it was not what you would call a dump at all. I believe by their own testimony of what they ever got out



(Deposition of Jafet Lindeberg.)

of it, was less than fifty dollars worth of gold.

(Witness continuing:) The Moonlight Water Company enjoined them from washing that dump and polluting the waters of Moonlight Springs. The injunction was afterwards dissolved and they sued the Moonlight Water Company for damages and obtained a judgment for \$2,500.00, of which company I was a stockholder and a member.

Q. Now, then, why did you not, at that time, as manager of the Pioneer Mining Company, bring a suit to quiet title or a suit in ejectment to eject these men from that ground?

A. I do not know of any reason to be given for it—the Pioneer Mining Company simply did not feel like doing [40] so, at that time.

(Witness continuing:) After that time Muther and Hopkins were working there under a lease from the Grant people; they were rocking and did some assessment work. They ceased working there long ago, when I notified them to quit. I never saw Bard on the ground, but I saw him at his office very often.

Q. Did you ever do any mining, and when I say you, I mean the Pioneer Mining Company, through you as its manager and president, within the boundaries of the disputed area, of any kind or character?

A. We have never done any mining upon Bench No. 1 with the exception of in the lower end, the lower westerly end where we are working hydraulicking at the present time.

Q. Did you ever do any mining whatever, within the boundaries of the disputed area?

(Deposition of Jafet Lindeberg.)

A. Never any actual mining, no, sir.

Q. Have you at any time, you or the Pioneer Mining Company, been in possession of a solitary foot of the disputed area?

A. I think we have always been in possession of the claim.

Q. Now, tell the Court in what way you have been in possession of this disputed area, if you can?

A. We have had our pipe-line across the claim; we have drilled across as we have practically run across all of our claims, crossing this ground.

Q. You have at the present time the same water pipes strung across the ground in conflict?

A. Yes, sir.

Q. On the same claim?

Q. Don't all of the works that you have now cross on the [41] Moonlight claim in the same way at the westerly end? A. Yes, sir.

Q. On Moonlight? A. Yes, sir.

Q. And on Bench No. 1 and the Winter fraction?

A. Yes, sir.

Q. And numerous other claims now owned by the Pioneer Mining Company and in that vicinity?

A. Yes, sir.

Q. And you have some pipes strung over the rest of the ground claimed in the same manner, the ownership claimed in the same manner, as the ground in conflict? A. Yes, sir.

Q. So that you have the same possession of the whole of the Grant claim that you claim to have of the ground in conflict? A. You could call it that.

(Deposition of Jafet Lindeberg.)

Q. Well, I am just asking you if the possession you now claim of the ground in conflict is not the same possession that you have of the rest of the Grant claim, I am just asking you, Mr. Lindeberg?

A. I did not know that a person in order to have possession of a mining claim would have to be upon every foot of the ground claimed.

Q. That is not an answer to my question; you have not answered my question.

A. When you are mining on a claim, I think that ought to be sufficient possession.

Q. Now, when you speak of mining on a claim, on that claim in particular, you refer to mining the portion of [42] the claim below the pipe-lines, between you and Little Creek?

A. Near, I believe to the northwest corner of the claim—I mean the southwest corner.

Q. You never have done any mining on this so-called No. 1 Bench, as you have it drawn out here on this map, Exhibit “H,” in the northerly side of the pipe-line on this claim?      A. No, sir.

Q. So, as a matter of fact, all the mining you have done on No. 1 Bench has been south of Bob Lyng’s Moonlight claim line?

A. Yes, sir, but we are working on the hill now.

Q. But you have never mined north of the lower side of Bob Lyng’s Moonlight claim?

A. Not yet.

Q. And you never have in any manner mined on the ground in controversy, other than this pipe-line?

A. We have not reached that part of it yet, no, sir.



(Deposition of Jafet Lindeberg.)

Redirect.

I am going outside to San Francisco, on the steamer "Victoria" to be absent from the District of Alaska during the coming winter.

Q. Has the assessment work been done each year on this claim by the owners, since 1901, since you obtained an option on the claim?

Mr. GILMORE.—Objected to as calling for a conclusion and not proper way of proving the fact, if it is a fact.

The COURT.—Objection overruled. To which ruling of [43] the Court the defendants then and there excepted and the exception was allowed.

A. Yes, sir, by the Pioneer Mining Company.

(Witness continuing:) The character of the ground that Mr. Jensen was digging in at the time I saw him in 1899, was lime and gravel. The Pioneer ditch runs across the upper end of the claim. It is called the Anvil Ditch, and was built in 1902 and 3, I believe by the Pioneer Mining Company, and has been owned by the Pioneer Mining Company ever since. The Pioneer Mining Company owns a number of claims in the vicinity of No. 1 Bench Moonlight, and they are carrying on a general system of hydraulic mining; they are working up towards this ground from the lower properties owned by the company with the intention of mining this ground when it is reached.

Recross-examination.

Q. Do you claim all of the placer ground through which your ditch runs in the Nome District?

(Deposition of Jafet Lindeberg.)

A. Yes, some of the ditches.

Q. But do you claim all of the placer ground in the vicinity of Anvil Mountain over which your ditch runs, by virtue of this ditch? A. No, sir.

Q. Now, your Anvil ditch runs across the upper end of the Grant claim, does it not? A. Yes.

Q. And crosses ground that is not in conflict, as well as that which is in conflict?

A. It ends there, our line ends there. [44]

Q. But it runs across this corner up by the northwest corner of the Grant claim that is not in dispute, and comes around in here (indicating)?

A. Yes, runs over there.

Q. You are not claiming anything by reason of that ditch there? A. No.

Q. Now, Mr. Bard gave you permission, did he not, to run your ditch line across this claim, didn't he? A. No. [45]

### **Testimony of John Brower, for Plaintiff.**

JOHN BROWER, being first duly sworn, testified as follows:

My name is John Brower. I have resided in Nome since June 14th, 1900. I have followed drilling as a business since 1905, using a drill similar to a Keystone. I know a bench claim called No. 1 on Moonlight east of Moonlight Springs in the Nome District. I knew that claim in 1907. I have been on the claim recently. I did some drilling on that claim in 1907 for the Pioneer Mining Company.

Q. Now, Mr. Brower, do you know where the ground in dispute is on this map? (Plaintiff's Ex-

(Testimony of John Brower.)

hibit "A.") A. Right in through here.

Q. Where did you drill?

A. We came in through here, right here at that line, and across over that line.

Q. What line is that? A. The telephone line.

Q. Running in here?

A. North of the telephone line. (Witness continuing:) which would be near the letter R. I crossed the ground in dispute in this action. I drilled one or two holes in here, right through here, then I went in here (indicating).

Q. Just designate with a lead pencil line on Exhibit "A"?

(Witness marks map.)

(Witness continuing:) I started up this way, drilled one or two holes then I turned and set my anchor down this way towards No. 2 on the map, then I went along the edge of the dam that stood right in here. I followed the line off No. 1 Moonlight claim. I drilled, I could not say exactly, oh, about six holes right in through here. My two brothers and some other gentleman, I forget his name, and a man by the name of Langstrom was [46] panning for the Pioneer Mining Company. The holes were in the neighborhood of 30 feet deep, I could not say positively, and the expense or cost was about \$1.50 a foot for just the drilling outside of the panning. I had nothing to do with the panning. The drill was similar to the Keystone, one that I built. I rather think the work was done in September, 1907. At that time I didn't see anybody else on No. 1 on Moonlight, ex-



(Testimony of John Brower.)

cept myself and the men assisting me. There was no one else there that I saw, and no one living on the ground that I saw. I know Arthur Gibson, and I was on the claim recently with him. I identified the holes that I drilled in 1907 and I designated them to Mr. Gibson and he tied them in by surveying while I held the line, that is, he made measurements.

Q. Mark on the map approximately where you drilled the first hole, make a small circle?

A. I can't tell just how the spaces run, how many feet, that is supposed to be the telephone line; it looked to me like a long distance on the map, of course I can't judge.

Q. We will mark these five or six holes on the map, that is approximately where you say you drilled two of the holes that you know of? A. Yes.

Q. After drilling those six holes that you have testified to did you drill any other holes on the lower end of No. 1 Bench Claim?

A. I came down, I crossed the telephone line, away down there (pointing) by a telephone pole, just about in here (indicating) I crossed over and went in this direction. Here is the mark I guess right in there.

Q. At 4?

A. After I got in there I came on down here a little further [47] and then down in this direction.

Q. So how many holes altogether did you drill on No. 1 Bench as near as you can state?

A. Six here, one or two holes up here.

Q. How many altogether?

A. About six here and about two up there.

(Testimony of John Brower.)

Cross-examination.

The Pioneer Mining Company employed me to dig the holes. I got my orders from Langstrom, he is here in court now. I think he gave me my orders. Mr. Louis Stevenson was there off and on. I don't believe he told me to drill any particular place. I cannot tell positively whether he told me or not. Langstrom did not tell me the ground was in dispute.

Q. Now, Mr. Brower, you knew of the Grant claim, where the Grant claim was, of course?

A. I didn't know anything about any claims when I was drilling.

Q. You did not know whether you were drilling on Bench No. 1 or the Moonlight claim?

A. I knew by the courses, but I did not know by the particular claims.

(Witness continuing:) In determining where I drilled I go by the telephone lines that is what I recognize. I busted the pipe-line when I was out there, and it is still lying there where I busted it.

Q. Did you do any drilling on 5 Above Discovery?

A. I drilled all along there.

Q. You commenced by working southerly; the railroad crosses here, towards Discovery, where that platform is? A. Yes, sir.

Q. And drilled in a southerly direction down towards Moonlight? [48]

A. Over in that direction, it has been so long since I have been upon the ground I don't remember.

Q. Did Mr. Stevenson give you any reason for going right along where the dam was?

(Testimony of John Brower.)

A. He didn't give me the reason. I could not go below, it was too soft.

Q. So you stayed above? A. Yes, sir.

Q. Was that the reason you drilled above there on account of the ground above being dry?

A. No, that was the orders, they told me where to drill.

Q. Why didn't you drill, why didn't you go along where that dam was, why didn't you go straight across here (indicating)?

A. That was the orders for me to go.

Q. Didn't Mr. Stevenson tell you to go as close to that dam as you could on account of the dam being on the line between the two claims?

A. He told me where to put the holes, he walked ahead and told me where to put the holes.

Q. Told you where to put the holes? A. Yes.

Q. Did he indicate the spot where he wanted the hole drilled?

A. He told me where he wanted the holes put, and I went in that direction, and about the distance apart he wanted them.

(Witness continuing:) The first hole was, I think, in the neighborhood of thirty feet, I struck bedrock in all of them. I can't tell you about the formation. [49]

Q. You went down along this old dam between where the point S and point U are on the map (Plaintiff's Exhibit "A")? A. Yes, sir.

Q. How many holes did you drill, about, in there?

A. Six holes.



(Testimony of John Brower.)

(Witness continuing:) When Mr. Gibson was out with me the other day he told me where the disputed corners were. I knew about where the bunches of stakes were when I was drilling out there. I drilled the holes but I didn't care where the stakes were. I didn't pay any attention to the stakes. I showed Gibson where the holes were.

Q. Did Mr. Langstrom give you any reason for drilling on that line?

A. No, he did not, he gave me my orders.

Q. Where did you go after drilling hole 4?

A. Coming on southeastern, 3 holes.

Q. Towards the line W and V?

A. Kind of a southerly direction.

Q. You never drilled any holes in what is indicated as the Grant claim other than those holes you have told about?

A. That is the only ones I showed him.

(Witness continuing:) I do not know it to be a fact that Louis Woods had drilled for six months on that same ground the year before. I don't know that anyone was on the Grant claim that same year. I was engaged in drilling in the neighborhood of three holes every 24 hours.

Q. What is your best judgment of the time it took you to drill the eight holes, the two and the six?

A. In the neighborhood of three days. [50]

Q. That was sometime around the month of September, 1907? A. Yes, sir.

Q. And during that time you did not observe anybody working on the Grant claim? A. No, sir.

(Testimony of John Brower.)

Q. They could have been working there for all you know?

A. There wasn't anybody, I could have seen them surely.

Q. You don't know where the Grant lines were?

A. There might have been some men working up there.

Q. There might have been?

A. There might have been but I didn't see them, I don't think so.

Q. You did not pay any particular attention to whether they were working there or not?

A. I didn't pay any attention to any other place.

Q. Did you make any observation of where the corners of the Grant claim were at the time you were drilling?

Mr. COCHRAN.—Objected to as not cross-examination.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Did you make any observations of the Grant claim to know whether there were any buildings on the Grant claim at that time?

Mr. COCHRAN.—Objected to as not cross-examination.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—We offer to show by this wit-

(Testimony of John Brower.)

ness that there were cabins on the Grant claim at that time.

Mr. COCHRAN.—Objected to as not proper cross-examination. [51]

The COURT.—The offer is denied. To which ruling of the Court defendants then and there excepted and the exception was allowed.

**Testimony of Andrew John Langstrom, for Plaintiff.**

ANDREW JOHN LANGSTROM, being first duly sworn, testified as follows:

My name is Andrew John Langstrom. I live in the Nome Precinct. Have lived here since 1900 off and on ever since. I know the plaintiff company and have been in its employ. I started to work in June, 1900, for the company and have worked for it every summer until the last two summers. I quit work for them in September, 1909, the 14th or 15th. In 1907, in September, I was working for them; at that time I was with Mr. Brower. Started out with him along with his drill, panning and looking out for that. I know the mining claim called Bench No. 1 on Moonlight. I was panning from the drilling made by Mr. Brower on that claim in September, 1907. I was out on the claim a few days ago. I found two holes very plainly and some others that were not so plain, but I could identify four or five of them, and I could see the track where the drill went. I do not know a man by the name of Woods or that he had been drilling up in that part of the country. I saw a drill there but I don't know exactly what year it was.



(Testimony of Andrew John Langstrom.)

Q. How many holes were drilled on No. 1 Bench in 1907 by Mr. Brower and others for the Pioneer Mining Company?

A. About a dozen holes. They were drilled early in September, about the 15th or so and after that. We must have been a week at least or more upon the claim. I made my reports of the pannings of [52] the drillings to Mr. Charlie Johnson, the manager of the Pioneer Mining Company. I have examined the map on the wall, marked Exhibit "A" for Identification, and I recognize where the telephone line runs. We crossed this telephone line and down here went across the pipe-line, the 30-inch pipe-line. (Witness pointing near the letter S.) The pipe-line caved in a little. That is the way we crossed the pipe-line some distance. We drilled two or three holes out there then we went further down. I was out there recently and saw where we crossed the pipe-line. I know where the penstock of the ditch is. We crossed the pipe-line with the drill not very far from the penstock, a little southeast. Mr. Louis Stevenson was with me the other day when I was out there. I pointed out the place where we crossed the pipe-line to him. The nature of that hill is so steep where it drops off, so it is very hard to cross here, to get along with a big machine like Brower had, so we had to follow the best place to drag it across where we were not drilling. The pipe-line caved down a little showing where we crossed. It was a 30-inch pipe and is there yet. We drilled two or three on the northerly end of Moonlight Bench No. 1 and about a dozen

(Testimony of Andrew John Langstrom.)

holes altogether. We found some prospects that I thought was pay. I reported my pannings to the Pioneer Mining Company in detail, to Mr. Charlie Johnson, the manager. Some of the holes were less than 30 feet deep. The first three were and some of the others further down were deeper, some 35 feet. We used a six-inch drill. I did not see anybody living upon this claim or doing any work on it while we were there. I was on the Moonlight Bench Claim No. 1 during 1903. I slept there in a cabin in the winter, about a month. The cabin was in an easterly direction [53] from the old Moonlight dam, about 350 feet south of the willows, a little bit south of the willows. It was within the boundaries of No. 1 Moonlight Bench. I was there in December and maybe a few days in January the following year, 1904. The cabin belonged to the Pioneer Mining Company. I was working for the Pioneer Mining Company doing assessment work. While I was residing upon the claim in 1903 there wasn't anybody else living upon that claim or doing any work upon it. There were no other cabins or houses or tents or buildings of any kind upon the claim. A man by the name of Louis Johnson and another man by the name of Axel Vernon were living off and on in the cabin with me. I do not know how long the cabin had been there. The first time I saw it was when I went there to sleep. I saw it several years afterwards.

Cross-examination.

Q. That cabin that you are talking about is what was known as the Caribou cabin, put there by Roland

(Testimony of Andrew John Langstrom.)

Sutherland, wasn't it?      A. I don't know.

Q. Just step over here and show me where that cabin was, on this map. (Plaintiff's Exhibit "A" for identification.)      A. Yes.

(Witness continuing:) The cabin was about 350 feet from the bunch of stakes at the southwest corner of the Grant claim.

Q. Just put the pointer where you think that cabin was.      A. What is the scale of this map?

Q. 60 feet to the inch. Every inch from here will be 60 ft.      A. Yes.

Q. Show us where it was, just approximately, where you think [54] the cabin was.

(Witness indicates.)

Q. Just hold the pointer there and I will make a mark there.      A. Yes.

Q. I will mark it X in a circle, that is the cabin where you and Mr. Louis Johnson slept?      A. Yes.

Q. And that wasn't inside of the ground of what is known as the Grant claim, this being the corner of the Grant claim on the map, you don't contend that you slept inside of the boundaries of the Grant claim?

A. No, not at that time, we didn't know anything about the Grant claim.

(Witness continuing:) I never heard of the Jerome Fraction and don't know whether the cabin was within the boundaries of the Jerome Fraction or not. The Pioneer Company boys told me that I was living on Bench No. 1.

Q. Now, Mr. Langstrom, is it not a fact that in the winter of 1903 and 4, the months of December and



(Testimony of Andrew John Langstrom.)

January, when you were living there, Mr. Hopkins and his partners had a cabin about where I am pointing, near the railroad track, and not to exceed 1000 feet from where you were?     A. What time?

Q. The time you were sleeping there in that cabin?

A. There were some people living east of where we slept.

Q. East of the present railroad track?

A. Well—

Q. And about east of the Moonlight springs, were they not?     A. Yes, I guess so, kind of northeast.

[55]

Q. Now, all of the time you slept there didn't some men take out a dump with a windlass on the ground about where I am pointing, here near the railroad, between figure "1" and the letter "C," in December 1903 and January, 1904?

A. I know when I got to the cabin in the evenings it was mostly dark, but I noticed the windlass and a very little amount of dirt coming up sometimes.

Q. You saw them hoisting dirt?

A. I saw them working with a windlass but I was not up there.

(Witness continuing:) I did not know Mr. Hopkins and I did not know Mr. Muther. I never went over and talked to them. I didn't know the lines of the claim at that time.

Q. Now, with reference to your drilling, you crossed, as I understand your evidence, the pipe-line near the letter "S" on the map, near the bunch of stakes as shown on the map as the letter "S," across in this direction?

(Testimony of Andrew John Langstrom.)

A. This is the telephone, what is marked the telephone line?

Q. Yes.      A. Crossed north.

Q. Will you take a pencil and draw a line where you crossed?

(Witness does so.)

Q. Draw a line across the pipe-line and the telephone line, as shown there, draw it pretty plain, so it can be seen?

(Witness does so.)

(Witness continuing:) We went this way. I don't remember whether we drilled any holes before we turned. I don't remember.

Q. Did you know at that time, Mr. Langstrom, where the line [56] of the Grant claim was and where the line of the Lyng claim was?      A. No.

Q. Did you have any orders from Mr. Stevenson or Mr. Lindeberg or from the Pioneer Mining Company, to drill across any particular line?

A. No, I didn't.

Q. Did you go on there of your own accord without any instructions?

A. No, I got instructions where to drill all the time, and Charlie Johnson went along with me and showed me where to dig the holes, and I pointed out to Mr. Brower where to drill.

Q. Why did you follow this line from S to U?

A. Because Charlie Johnson told me.

Q. Was that the only reason?      A. I don't know.

Q. Wasn't it pretty wet below that dam?

A. It was wet.

(Testimony of Andrew John Langstrom.)

(Witness continuing:) Johnson said like this, put a hole here, and put a hole there, and a hole there. (Indicating.) We went along further and he said put another hole here and so on.

Q. You don't know how close that dam is to being on the line between those two claims? A. No.

Q. Did you pay any attention at that time to whether or not anybody else had drilled there just prior to your going out there in 1907? A. No.  
[57]

(Witness continuing:) I don't remember whether or not Mr. Woods and some other men drilled in that vicinity that same year or not, they might have done so without showing any more marks. I did not make any examination at that time whether or not there were any cabins on the Grant claim. When you are on the lower end of the claim owing to the nature of the ground, you can't see anything on the upper end. It is hard to see very far. I am mining at the present time out on the tundra, for myself.

#### Redirect Examination.

Q. About how far did you start in to drill from the penstock, which way from the penstock?

A. I didn't pay very much attention to the distance, but it must have been—I never paid any attention to the penstock, I cannot tell exactly how far it is. The pipe-line is lying there yet. When I was out there the other day I found the place where we crossed the pipe-line by the marks where the drill had gone, and I saw the pipe where it had caved off, and the telephone pole.



**Testimony of Levi Mathieson, for Plaintiff.**

LEVI MATHIESON, being first duly sworn, testified as follows:

I live on the Sandspit in Nome. My name is Levi Mathieson. I have lived in Nome since the spring of 1909. I am a miner and have been employed by the Pioneer Mining Company. I worked for the Pioneer Mining Company last year, in the summer and fall. I am acquainted with the placer claim known as No. 1 Bench Moonlight. I got acquainted with it last fall when I was there working on it in the first part of November. I think it was the 6th in the morning when I started to work. I [58] worked upon it until the 15th sinking prospect holes. I sunk two prospect holes, the first one was about 15 feet deep and the other one was about 30 or 35 feet deep. These holes were a little way up from the southeast corner. The second one was about 125 or 130 feet from the southeast corner.

Q. Who sent you to do the work there?

A. Mr. Stevenson did.

Q. Was Mr. Stevenson out there on the claim while you were working there?

A. He was there a few times.

Q. What did he do out there?

A. Why asking how everything was going on, how far we was down and so on.

(Witness continuing:) While I was there from November 6th to November 15th, 1910, Harold Nelson was with me working there.

Q. Aside from Harold Nelson and Louis Steven-

(Testimony of Levi Mathieson.)

son, did you see anybody else on that claim during the time you were working?

A. Not except Mr. Bossi the foreman for the Pioneer Mining Company at that time.

Q. Were you in a position, while you were working on that claim, to see anybody else that might have been working on that claim?

A. No, sir, not at that time, while we were working there was nobody else except we two, Mr. Stevenson and Mr. Bossi.

(Witness continuing:) We were sinking the holes with pick and shovel, bucket and windlass, a cable and a boiler.

Cross-examination.

Q. Mr. Mathieson, do you know where the Grant claim corners [59] are?

A. I am not very well acquainted with the Grant claim.

Q. Do you know Captain George Smith?

A. No, sir, I don't think I do.

Q. Do you know a red cabin out there on the claim?

A. I don't believe I do. I was working on the Oakland claim near the Grant claim the other when you were out there.

Q. You know where the red cabin is on the Grant claim, over on this portion? (Indicating.)

A. I don't know.

Q. You know there is a red cabin there?

A. Yes, sir.

Q. Would it be in this position, on the brow of this hill?      A. Just about there.

(Testimony of Levi Mathieson.)

Q. Inside of what you call Bench No. 1?

A. Yes, sir.

Q. You say you were working down here towards the southeast corner of Bench No. 1 what you call the southeast near point letter "V"? A. Yes, sir.

(Witness continuing:) The place where we dug the second hole I indicate on Plaintiff's Exhibit "A" by the word "second" with a circle drawn around it, and the place where we dug the first hole by the word "first" with a circle drawn around it. These holes were dug between November 6th and November 15th, 1910.

Q. Neither of those shafts that you dug is within the ground in controversy in this lawsuit?

Mr. COCHRAN.—Objected to. The map speaks for itself.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [60]

Q. Did you see a man living at that time in that red cabin? A. Not at that time.

Q. Will you swear that there was no man living at that time in that red cabin?

A. There was no man at that time.

Q. Did you go up to the red cabin?

A. No, I was not up there.

Q. Is it not a fact, Mr. Mathieson, that a man by the name of Adolph Meyer had been working at that cabin since the 26th day of October, 1910, and was working out there up to the time this suit was started, living in that cabin?



(Testimony of Levi Mathieson.)

A. No, sir, not while I was there.

Q. How long were you there?

A. From the 6th to the 15th of November.

Q. Where did you live?      A. At Little Creek.

Q. How long were you working at the time?

A. Ten hours.

Q. Each day?      A. Yes, sir.

(Witness continuing:) I was on the windlass and Harold Nelson was down in the hole. I didn't have any interest in that claim other than just doing the work for wages. I did not know the boundaries of the claim. I saw a few stakes, looked at them, but that was since the lawsuit started.

Q. You didn't know at the time you were working there about the boundaries?

A. Mr. Stevenson showed me one of the stakes.

Q. Isn't it a fact that you were doing the assessment work on what is known as the Jerome Fraction?

Mr. COCHRAN.—Objected to as immaterial.  
[61]

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted, and the exception was allowed.

Redirect Examination.

Q. Now, after you were through working on No. 1 Moonlight, where did you go next to work?

Mr. GILMORE.—Objected to as not redirect.

The COURT.—Objection overruled, to which ruling of the Court the defendants then and there excepted, and the exception was allowed.

A. We took our boiler, pulled it with a horse team,

(Testimony of Levi Mathieson.)

and went over east, a little east below, and went right across the track east of the claim.

(Witness continuing:) I should say about five or six hundred feet. We were there the last part of the month of November. From the place that we were then working we could see the upper part of the Moonlight Bench No. 1 but not the lower part. We could see the red cabin plain.

**Testimony of Harold Nelson, for Plaintiff.**

HAROLD NELSON, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is Harold Nelson. I have lived in Nome since 1908. I came from Seattle. Have been in the country four years. I have worked for the Pioneer Mining Company. I worked for them last summer and last fall. I am acquainted with No. 1 Bench Moonlight. I worked on it last fall, in 1910. I worked on it from the 6th day of November to the 15th of November, with Levi Mathieson sinking two shafts; one of them about 15 feet [62] and one about 35 feet. We used a bucket, pick and shovel, windlass and cable.

Q. Was anybody else on the claim there when you were there?

A. No, except Mr. Stevenson, manager of the Pioneer Mining Company at the time, and the foreman of the Pioneer, Mr. Bossi.

Q. Did you see anyone else upon Bench No. 1 Moonlight at the time you were there?

A. I did not.

(Testimony of Harold Nelson.)

Q. Was anyone working on that claim except you and Mr. Mathieson?     A. No.

Q. You said Mr. Stevenson was on the claim?

A. Yes.

Q. What was he doing, do you know?

A. Oh, he showed us where to put the holes.

Q. What else did he do?     A. That is all.

Cross-examination.

Q. Mr. Nelson, you worked in the same two shafts with Mr. Mathieson?     A. I did.

Q. Did you do any other work at that time on that claim?     A. No.

Q. Those are the two shafts that he has indicated near the letter "V" on the map?     A. Yes.

(Witness continuing:) I worked down in the shaft underground below the surface most of the time. I saw one stake when I was working out there, down near where we were working. I don't know anything about the stakes of the claim, and I paid no attention to them. [63]

Q. Was anybody living out there in that red cabin at that time?     A. There wasn't nobody there.

Q. You didn't pay any attention to it, you didn't go up to the cabin?     A. No.

Q. The cabin was about a 1,000 feet away from where you worked?     A. Yes.

Q. You didn't know that the red cabin was on the same claim that you were working on?     A. No.

(Witness continuing:) I have been working for the Pioneer Company for three years off and on pretty nearly all the time, and so has Mathieson. Mathie-



(Testimony of Harold Nelson.)

son and I have been doing assessment work around the country for the Pioneer Mining Company and dug holes where we were told. We didn't pay any attention to stakes we dug where Mr. Stevenson or anybody else of the Pioneer told us to. It isn't our duty to look up stakes or see if we were within the boundaries of any claim.

Redirect Examination.

Q. You have been out on the claim recently, have you not?     A. Yes.

(Witness continuing:) Was there two days ago. At that time I went around the claim to see where the stakes were and examine them.

Q. At the time you worked out there you say you used a thaw?     A. Yes, sir.

Q. How much of the time were you out of the shaft while you were thawing?     A. Three hours a day.

Q. And you came up out of the shaft for lunch every day?     A. Yes, for dinner. .[64]

Q. Now, during the time you were not down in the shaft, did you look around to see if anybody was nearby?     A. No.

**Testimony of Louis Stevenson, for Plaintiff.**

LOUIS STEVENSON, a witness on behalf of plaintiff, recalled, testified as follows:

At present I live in Nome. Have lived here since 1901 except for two winters when I went out to the states. I have been mining; have been assistant manager for the Pioneer Mining Company most of the time, and during the winter I have been winter manager. In the winter I have general supervision of

(Testimony of Louis Stevenson.)

the work, and in the summer time I have been kept pretty busy in the office most of the time, keeping time, taking care of the gold, paying the men, ordering provisions, and while Mr. Lindeberg has been absent of course the management has been up to me in the summer time the same as in the winter time. I have the custody of the books and papers of the Pioneer Mining Company.

Q. I will ask you, Mr. Stevenson, what this paper is that I show you at this time?

A. It is the original location notice of Andrew Jensen, the way I understood it to be when he got the papers.

(Witness continuing:) I first saw this paper in 1903 and have seen it off and on since. I think I have seen it every year when I have looked through the old papers. I have run across it several times. I could not state the day when I saw it last. I handed the paper to you this morning after I had looked it up. I have never seen any other notice of Andrew Jensen's. The [65] Pioneer Mining Company came by this paper in the fall of 1903 from Mr. McKay, I believe. It was received from Mr. McKay by the Pioneer Mining Company with the deed from him. I graduated through the grammar school in San Francisco, and then I went to business college. While I have been in the employ of the Pioneer Mining Company I have had considerable experience with handwriting and the signatures of various people, to a certain extent. While I was outside one winter I went to Europe, and one winter I spent in

(Testimony of Louis Stevenson.)

the Scandinavian-American Bank. I worked in four or five different departments in the bank. I had considerable experience in recognizing handwriting.

Q. I show you the signature of Andrew Jensen to his deposition and having observed the same state whether or not the signature to the notice is in his handwriting. A. It is the same.

Mr. SCHOFIELD.—At this time we desire the instrument marked for identification, and will introduce further expert evidence with reference to the handwriting, and also the endorsement thereon, it being in the writing of G. W. Price, at that time deputy recorder of this district. We desire at this time to have it marked for identification, we don't want any question about the identification of that instrument.

The COURT.—It may be marked "I" for identification.

Q. Mr. Stevenson, are you acquainted with the placer mining claim known as Bench No. 1 Moonlight? A. I am.

(Witness continuing:) The first time I knew anything about it was in 1902. I knew the Gadd brothers were there doing some work; they used to come to Discovery, Anvil, and they got some meals from us; that was in 1902 the latter part of the season. I saw them over there once. They were in the willows. [66] You know there is a kind of offset there on the claim, on the northerly part of the claim. I would say it was northerly, on the northerly half of the claim. They were sinking a hole when I saw



(Testimony of Louis Stevenson.)

them. I don't remember their first names.

Q. Can you point out the spot on the map?

A. Not the exact spot, I couldn't.

(Witness continuing:) I do not know how long they were working there at that time, the number of days, I couldn't tell.

Q. Did you see any other work done on that claim during the year 1902?

A. Well, there was an old dam that was built there I believe in the spring of 1902.

(Witness continued:) That dam is just east of the line of Bob Lyng's Moonlight claim. The dam was built by the Moonlight Water Company. The Pioneer Mining Company received a deed to that property from McKay in 1903. We had two men work there from September 17th or 18th to October 3d the time we closed down. In 1903, they were prospecting for the Pioneer. I was in court when Mr. Langstrom testified to having occupied a cabin on the southern half of the claim. The cabin belonged to the Pioneer Mining Company. It was put on No 1 Bench Moonlight on Thanksgiving Day, 1903, and it remained there something like three years from that date. It was put there for some of our men to live in, some of our working men, and it was occupied from time to time.

Q. Besides the work that you mention having been done by two men on the claim in 1903, was there any other work that you recall?

A. Not by the Pioneer Mining Company. [67]

(Witness continuing:) I was upon the claim my-

(Testimony of Louis Stevenson.)

self during the year 1903. I went with Mr. Lindeberg by Moonlight dam and over that way. He was going to show me some claims that he has or intended to take over from P. D. Winter. The Wild Goose Mining Company had sunk a shaft over there east of the railroad track, and they had been panning, and he took me over to show me, and we went up where those men were working at the time. The hole that the Wild Goose had dug was on the Winter Fraction. I did not examine the work that the men did that I mentioned.

Q. In the year 1903 did you build any ditches?

A. No.

Q. That is with reference to property in and about Bench Claim No. 1 Moonlight? A. Not in 1903.

(Witness continuing:) I said I was acquainted with Bench No. 1 Moonlight in 1904. I first observed the stakes of that claim in the fall of 1903 after the boats had gone out that fall, I guess it was either the latter part of October or first of November, I went there, went over all the claims out in that neighborhood that we either had an option on or owned direct, to look up the stakes. I found the stakes at the corners of Bench No. 1 Moonlight. There were 4 stakes, 4 corner stakes. They were marked M. B. and then were numbered. They were 2 by 4 and then there were some old willows, and I saw that they were marked also. I would say the stakes were 2½ to 3 feet above the ground. Some of them were driven down, and some of them had a mound around. The first one I found was this one at point "V" on the

(Testimony of Louis Stevenson.)

map. I came over this way where the Winter Fraction was and found the Winter Fraction stakes. I came over this way and found the Winter Fraction stakes and I found the Moonlight stake in here at "V"; then I walked up here looking [68] at stakes and found that one. I was wandering in here and found several bunches of stakes over this way, to "Q" and then a bunch of stakes here at point "P."

Q. Confine yourself to Bench Claim No. 1.

A. All right, I found a stake at letter "Q," and then I also found a stake at letter "W."

Q. What other stakes than 3x4 or 2x4's was it?

A. 2x4.

Q. Did you find at the corner "V" if any?

A. Well, there was one or two more stakes, but I didn't pay any attention. When I found what I wanted to find I did not look very carefully for any more.

Q. At the corner letter "N" what stake did you find there besides the 2x4?

A. There were several stakes, and there were two bunches there pretty close together, but I didn't look at any other stakes very closely. I was just trying to find what I was looking for. I found a stake marked M. B.

Q. What character of stakes were the others you found at point "W"?

A. There were several old willow stakes there.

(Witness continuing:) There was a mound there, because there was a little hole dug there, they had



(Testimony of Louis Stevenson.)

made a mound with it; the stakes were mounded up at that point. I was out at that hole recently. I don't remember of finding any more than one stake at point "Q." At point "W" there was a good many stakes down there. The Winter Fraction stake was there and some willow stakes. I have been on the ground frequently since 1903 and I have observed stakes at those corners since that time a good many times. The stakes that I observed in 1903 are still at [69] the respective corners with the exception of the one at the point "Q" that was dug up when we put our ditch there. That was placed up in our ditch; I don't know whether it might have been moved a few feet, I could not say as to that. It was out for a year or two and then put back. That was done in 1904. It was lying in the ditch bank for a while, but was put up there afterwards.

Q. What changes, if any, were made with reference to the stakes at point "W" since 1903?

A. They have been mined out a long time ago.

Q. What has been done towards establishing and maintaining the corners?

A. They were reset; I don't know whether it was in 1909 or 1910; it has been covered up since with the high tailings. Mr. Blake was out there a little while ago to put up the stake, but he didn't have his notice.

Q. What work was done on that claim in the year 1904, if any?     A. We dug the ditch through there.

Q. What kind of a ditch is that?

A. It is a ditch that I believe is about 6 feet wide

(Testimony of Louis Stevenson.)

on the bottom and 10 feet wide on the top, and about 3 feet deep.

Q. And it extended to what point from what point across the claim?

A. It extends from the northeast corner across the claim, it don't go straight.

Q. It follows its contour around?      A. Yes.

Q. Is that ditch marked on that map?

A. Yes.

Q. What system of ditching is that, if any?    [70]

A. Well, sometimes it is called the Anvil ditch and sometimes the Moonlight ditch. It has been going by two names. I don't know what name they carry it on the books.

Q. Calling it the Anvil ditch, where has that ditch got its intake?

A. Lower end of No. 4 Above Anvil.

(Witness continuing:) It runs down the right limit and is taken across Anvil creek with a 30-inch pipe-line at the lower end of No. 1 Above Discovery. The eastern terminus of the ditch is on what is called the Carlson claim, about 300 or 400 feet from the letter "N."

Q. What was that ditch built for?

A. It was built to mine our properties below the ditch.

Q. Well, now, specifically, what property?

A. All the claims we have that lie under the ditch.

Q. Under the ditch?      A. Below.

Q. Now, for the purpose of using these waters, what have you done by way of erecting penstocks and

(Testimony of Louis Stevenson.)

pipe-lines on the claim?

A. We have been building and maintaining several penstocks and several pipe-lines over this claim.

(Witness continuing:) Within the boundaries of the claim at the present time the first penstock was put in over here by the letter "Q," and the first pipe-line was a pipe-line that comes from the upper ditch and goes down into the lower ditch right in front of this penstock here at the letter "Q" coming right down and following parallel with that one. We use the first pipe-line that we laid over here.

Q. What do you call that upper ditch?

A. Nome River Ditch. [71]

(Witness continuing:) The pipe-line that I speak of as coming down from the Nome River Ditch runs across claim No. 1 Bench just under at the line, I would say. The pipe-line ran down the entire length of the claim. We mined down here in the vicinity of the letter "W." I believe the intake of the pipe-line is about 24 inches and reduces down to 15 or 16 inches. The pipe-line was put in there, I believe, in 1905. I wouldn't say, it was in the fall of 1904 or 1905.

Q. Is it there to-day?

A. Not in the first position we put it in. We have been relaying and changing it mostly every season, every spring.

(Witness continuing:) It is there now in its changed position. The way it works from there may be a little further west. It is within the boundary lines of Bench claim No. 1. The next penstock that



(Testimony of Louis Stevenson.)

we built is not inside of this claim; that penstock is on the Carlson location, near the letter "C." That penstock is near the Anvil Ditch, which leads the water into the pipe. The first pipe that we put in there let the water down to Discovery claim and the Portland Bench on Little Creek. It was a 30-inch pipe and the second one came in over this way south of letter "C" and over to what is 4 here. We ground-sluiced the ground here, and on the Winter Fraction and Moonlight claim beginning with the letter "W" with the pipe-line, coming west here. We had other pipe-lines running across this No. 1 Moonlight. There was one line that came east from the letter "Q" from the Nome River Ditch, running down the entire length of the claim. That was laid there in the fall of 1907 and taken up in the spring of 1910. Then, we had a 30-inch pipe that also comes from Nome River Ditch, and crosses at the penstock, letter "Q" and came over the entire claim. Besides the four that [72] I have mentioned there has been one put in there lately. There is another penstock from which we have used the water on No. 6 McKay Bench. The first line from letter "Q" going south, was either 15 or 16-inch line; then the second one we laid was in the Carlson location; that was a 30-inch pipe; then another 30-inch pipe from the Nome River ditch down through the claim; then from Nome River ditch south through this claim; another 17 or 18-inch pipe-line; then another pipe-line from the penstock in the Carlson location that ran westerly on this claim, and that is a 17 or 18-inch pipe also; it

(Testimony of Louis Stevenson.)

also crossed Bench Claim No. 1 going by the south-east corner of the Bob Lyng claim. Then there was another pipe-line running westerly to the McKay Bench, No. 6.

Q. How long have all of these pipes been continued?

A. Since we laid them in 1905, 1906 and 1907.

Q. What is necessary to be done with reference to the ditch and the pipe-lines each year, if anything?

A. Well, the ditch has to be cleaned out every spring, start in shoveling snow out of it, clean it out, and the pipe-lines have to be relaid more or less. The pipe-lines generally pull apart more or less in the winter time so we have to relay them in the spring.

Q. About how many men and for how long a time is it necessary for them to work to clean out the ditch each spring, as a rule?

A. Oh, well, we used to have 20 or 30 men in the spring.

Q. Confine yourself to this claim.

A. Oh, well, four or five times.

Q. How many men? A. Six to ten men.

(Witness continuing:) I can't give any definite rule for it, [73] because it is different every year; some years we might go to an expense of \$800 or \$1,000 in fixing up the pipe-line and others less, and others more. To lay a 16-inch pipe-line it generally takes four men. To lay a 30-inch pipe-line you have to have six owing to the weight of the pipe. I would estimate the expense every year in working on the

(Testimony of Louis Stevenson.)

pipe-line, would come to from \$1,200 to \$1,500. I know where the conflict ground in dispute in this action is.

Q. What portion of the work you have mentioned is within that conflict ground, that is so far as the work on the pipe-line and ditch is concerned?

A. I think most of it is on the conflict ground.

Q. Have you made an estimate, or can you make an estimate as to the value of the improvements placed upon Bench claim No. 1 Moonlight by the Pioneer Mining Company since they acquired title in the fall of 1903?

A. I have not made any, but I think I could approximately figure it out.

Q. Can you give an approximate statement at this time?

A. Well, I guess if I get a pen and paper—I know about what the cost would be for each foot of pipe-line.

Q. What is the cost of a 17-inch pipe?

A. Well, I would say that it is about \$2.00 a foot.

Q. Laid on the ground?

A. Well, no, that is figuring the cost of the labor to lay it.

Q. A 30-inch pipe, how much would that cost?

A. That would be \$3.00, that is the cost of the pipe on the ground.

Q. A ditch 6 foot bottom, 10 feet on top, how much would that [74] cost per running foot, if you know?

A. I place the cost in the neighborhood of \$1.25 to



(Testimony of Louis Stevenson.)

\$1.50 a foot.

Q. Now, during the year 1903 did you see any one else than representatives of the Pioneer Mining Company on this Bench claim No. 1 Moonlight?

A. I did.

(Witness continuing:) There were some men working there the winter of 1903 and 1904. I didn't know them very well. I know at what point on the claim they were working, approximately. They were working in the neighborhood of here (indicating), in the neighborhood of where it says No. 1 on the map. (Plaintiff's Exhibit "A.") They were there with a windlass working there during the winter prospecting. I talked with them. I went there and told them to vacate, that we owned the ground. They said they were not doing much, they were just prospecting.

Q. Did they vacate? A. They did not.

Q. In the year 1904 what work besides building that ditch across there did you do on the claim?

A. We sank one prospect shaft, December 10th to 16th, to bedrock, using 11 sacks of coal, and charging up one day's teaming. That was sunk in the southwest portion of the claim, Bench No. 1 Moonlight. I don't remember if there was any other work done there that year.

Q. Did you see any other person upon that claim during the year 1904? A. Yes.

Q. When?

A. In the fall of 1904, Mr. Bard, the attorney, had

(Testimony of Louis Stevenson.)

a lay [75] there and was there prospecting in 1905. He told me he had a lay on the Grant claim. I talked with him several times. I told him we owned the ground, and to vacate.

Q. Did he vacate? A. He did not.

(Witness continuing:) I was on the ground when the shaft was sunk in 1904. I don't recollect whether there was any cabins or tents upon the claim at that time or not.

Q. Now, coming down to the year 1905, what work was done upon Bench claim No. 1 Moonlight by the Pioneer Mining Company that year?

A. That is the year that we built the penstock at letter "Q."

(Witness continuing:) And also laid the pipeline down near the southwest corner, near "W." I believe we laid the one coming from the Nome River ditch, the 18-inch pipe that leads down to the penstock at the letter "Q." In 1905 besides repairing ditches we sank one shaft to bedrock south of the Bob Lyng claim. I was on the claim personally myself. We were ten days from December 15th to December 25th in doing the work. I don't recall seeing anybody else on the claim at that time. To my best recollection we commenced using water through the Anvil Ditch in 1906. We ground-sluiced near the southwest corner with water out of this ditch and partly from the upper ditch, from Nome River Ditch. I could not say to what extent we ground-sluiced because I haven't got any survey. We ground-sluiced out towards No. 2 Moonlight in the southwest corner

(Testimony of Louis Stevenson.)

of Bench No. 1; besides ground-sluicing on the corner of the claim, we sank a shaft in November, a little east from the southwest corner, it was in November. I don't remember whether we did any other mining work on that portion of the claim that year or not. I was over the claim a great deal in 1906, almost every day all summer and [76] in the fall and to my recollection I did not see anybody else than representatives of the Pioneer Mining Company upon the claim during that period. My visits were such and my position was such that I could have been apt to have seen them if there had been anybody there. During that year no one had a cabin on the claim.

Q. Now, coming down to the year 1907, what work was done upon the claim?

A. Of course, in the spring we fixed up the ditch and our pipe-lines, and then we ground-sluiced and mined in the southwest portion of the claim.

(Witness continuing:) Then, we drilled there from September 15th to the 28th and sank 17 holes. Mr. Brower did the work. He had Mr. Langstrom with him. I went there frequently while he was drilling there and while Mr. Langstrom was panning. The results of the pannings were reported to Charlie Johnson. I had access to the reports of the pannings all the time. Besides this drilling there was ground-sluicing and mining in the southwest corner. The drilling was done over in this corner up here. They drilled first in the direction, first on Fraction 5 and 6 Bench; then south of "Q" and came southeasterly on the east side of the Bob Lyng's claim and came



(Testimony of Louis Stevenson.)

down here, and following then east of this line, east of the easterly line of the Bob Lyng's claim, and then we came on down this way, and then we crossed over this way about 20 feet I should say, west from the southeast corner of Bob Lyng's claim and came over in through here, and then drilled some holes in V and A, drilled two holes east of the railroad tract, V and A. I didn't see anybody else on the claim except the Pioneer Company's representatives. [77]

Q. During the year 1907, was anybody else upon the claim so far as you know?      A. Yes.

Q. Who?

A. There was a drill in up here somewhere, did some drilling in the spring.

Q. Do you know whether that was on the conflict ground?      A. Partly so and partly not.

Q. Do you know how long they were actually using the drill on the ground?

A. No, I wouldn't say in the neighborhood of six to ten days. The drill was there longer than that.

Q. Now, coming to the year 1908, Mr. Stevenson, what work was done by the Pioneer Mining Company on this claim, No. 1 Bench Moonlight?

A. We cleaned out the ditch and fixed up the pipelines, and then we were ground-sluicing, and mining going on in east, and we also sank a shaft there in the fall of 1908.

Q. Where was that shaft sunk?

A. I wasn't here at that time, so I couldn't state.

(Witness continuing:) I went to the states in the fall. I believe they were shoveling in at that time,

(Testimony of Louis Stevenson.)

coming on up that way. I would not say how much mining we did do there in 1907 and 1908 because I don't remember; we made no survey, but we were coming on up every year. I can state definitely the way we mined in 1909. I did not see anybody in possession, working or occupying that claim besides representatives of the Pioneer Mining Company during the time I was there in 1908. [78]

Q. Now, in the year 1909, what work was done upon the claim?

A. We were ground-sluicing and mining in 1909.

(Witness continuing:) We used a self dumper, hoisting there at that time, and that was the time we were sluicing east of where the corner was, east of the point "W." Besides this mining and ground-sluicing east of point "W" we did not do anything except as we had to do every spring, clean out the ditch and the pipe-line. There was no prospecting done to my recollection. I was outside in the winter of 1908 and 9 and got in in June. There was nobody on the claim in June.

Q. Now, in the year 1910, what work was done upon the claim by the Pioneer Mining Company?

A. We were doing the usual thing, cleaning the ditch, fixing our pipes, ground-sluicing, mining in the southwest corner.

(Witness continuing:) In 1910 we were running self dumpers and a hoist on the claim.

Q. And during the year 1910, how much work had been done in the matter of ground-sluicing and mining on the claim?

(Testimony of Louis Stevenson.)

A. We ground-sluiced quite extensively, but regular mining we did not do much in 1910. We may have taken some of the ground embraced within the claim, but most of the ground we took out was taken out of the Winter Fraction and No. 2 Moonlight.

(Witness continuing:) I am acquainted with Levi Mathieson and Harold Nelson; they worked for the Pioneer Mining Company in the winter of 1910 prospecting on several claims in the vicinity of Moonlight. They worked on Moonlight Bench No. 1 from November 6th to the 15th, prospecting and sinking shafts. The first one was about 15 feet deep and the second was about [79] 34 feet to my recollection. I had Mr. Bossi do the panning. I was out there personally while they were there. I was there on the 6th; I was there on the 7th but I could not say whether I was there on the 8th, but I was there again before the 15th. I lived over near Little Creek so I was up there all the time. The day they went further over there I showed them where to go on the 15th.

Q. During the time they were sinking the shaft, there was nobody else on Bench Claim No. 1 Moonlight? A. No, sir.

Q. Did you have occasion to observe particularly whether there was at that time? A. I did.

Q. Why?

A. Well, I think you told me I should look out and see if there was anybody there or not.

Mr. GILMORE.—I move to strike out the answer as hearsay and not responsive.

The COURT.—Motion denied, to which ruling of



(Testimony of Louis Stevenson.)

the Court the defendants then and there excepted and the exception was allowed.

Q. There was a cabin upon the claim at that time, do you know what cabin that was? A. I do.

Q. Whose? A. That was McCumber's cabin.

(Witness continuing:) There wasn't anybody occupying that cabin at that time, while they were working there. I did not see anybody working on the cabin during that period of time.

Q. Would you have seen them if they had been working there [80] at that time?

A. I may and I may not.

(Witness continuing:) I know approximately when the cabin became occupied that winter, it was some time after December 20th.

Q. When was this action commenced, if you know?

A. We commenced to work there on Sunday, which was the 6th, I believe the action was started the next day, the 7th.

(Witness continuing:) I had a talk with McCumber when on the ground in the fall of 1909. I don't remember whether I went to see McCumber or not in 1909. I spoke to McCumber several times last fall before this suit was commenced. I could not state the exact time, I haven't got the markings down, at least I have an old memorandum-book which I haven't found; I used to mark down, but I haven't found it, so I couldn't say the dates that I spoke to McCumber.

Q. I wish you would state, Mr. Stevenson, what waters were used in mining and ground-sluicing

(Testimony of Louis Stevenson.)

Bench claim No. 1?

A. Waters from the Anvil Ditch, also water from the Nome River Ditch.

Q. Taken through what pipes?

A. Running over this very claim.

Q. Did the pipes run full when you were using them?      A. Sometimes and sometimes not.

Cross-examination.

The first time I ever heard of this Bench Claim No. 1 Moonlight was in 1902. I heard about it from the Gadd boys, who were doing some work. I couldn't say whether the Pioneer . [81] Mining Company had an option on the ground then or not. I did not pay any attention to stakes in 1902. I know the Gadd boys were on that ground. I had not looked up the stakes at that time. The first knowledge I ever had of this claim with reference to its boundaries was in 1903, four years after it was alleged to have been staked. In 1903 the claim was marked by survey stakes, 2x4 board stakes. I do not know of my own knowledge who put them there. The survey stakes were scribed M. B.

Q. You said there were some old willows there that had no writing on them?

A. I could not see any.

Q. You don't pretend to tell Mr. Stevenson, who put those willows there?      A. No, sir.

Q. Or when they were put there?

A. No, sir.

(Witness continuing:) I made my investigation

(Testimony of Louis Stevenson.)

after the boats left in the fall of 1903 and found four scribed board stakes. I believe the first time I ever heard of the Grant claim was in the winter of 1903 and 1904, a little after, maybe a month, something like that, after I observed the No. 1 Bench Moonlight I did not at that time become familiar with the west end stakes of the Grant claim. I now know where the Grant claim is. I first got acquainted with it about the time Bard was mining there. I tried to find out from him who claimed the ground but he wouldn't tell. It was after 1905 some time. I know to-day where the ground in controversy is.

Q. Outside of the testimony of the claims of work done by the Pioneer, have you seen men prospecting or digging shafts or tunnels or drifts on the ground in controversy [82] since 1903, how many times?

A. 1903 and 1904 that was the first time, and then by Bard 1904 and 1905, and then that drilling that was there in 1907, and then by McCumber's men, I understood it was his men.

Q. During all the time you saw that work done you knew that those men were claiming the ground under what is called the Grant title?

A. Well, the first boys—

Q. Just yes or no? A. Both yes and no.

(Witness continuing:) In 1903 and 4, in the winter, the men were prospecting with a windlass.

Q. Were they working out where they could be seen by anyone passing in the country?

A. Yes, sir.

Q. Open? A. Yes.



(Testimony of Louis Stevenson.)

Q. And how long did they work there during that winter?     A. That I could not say.

Q. What is your best judgment of the time?

A. I should think they must have been there three, maybe five months.

Q. And do you know a man by the name of W. A. Hopkins?     A. Yes.

Q. The man that Mr. Lindeberg referred to in his deposition as being a dangerous fellow?

A. Yes.

(Witness continuing:) I don't know what he did, he was there within the ground in controversy. He had some men working [83] there, not very many. I know John Rieck, also Oscar Margraf. I did not see John Rieck working on the ground in controversy in the spring of 1904 or winter of 1903 and 4. I lived in Nome in the winter of 1903 and 4. Rieck and Margraf could have done some work there without my knowing it. I knew J. C. Muther in 1904.

Q. Did you see Mr. Muther working there in the year 1904, summer, fall and winter of 1904, and spring of 1905, on the ground in controversy?

A. Yes, sir, talked to him several times.

(Witness continuing:) I believe Muther lived in a cabin on No. 2 East Fork Moonlight.

Q. Now, isn't it a fact that he had a cabin down in here (indicating) in the winter of 1904 and 1905, near the figure 1, right near the railroad?

A. Well, I would place it a little further east.

(Witness continuing:) I believe they were living on No. 2 East Fork.

(Testimony of Louis Stevenson.)

Q. Now, Mr. Stevenson, how long did Mr. Muther work there in the fall of 1904 and spring of 1905 on the ground now being litigated?

A. They might have been there five or six months.

Q. How big a crew of men did they have working there?

A. Well, I don't know, I wouldn't state that, five or six men.

Q. Didn't he have seven or eight at one time working there with three windlasses?

A. I don't think he had three windlasses.

Q. Did you see any dumps taken out that winter by Mr. Muther? A. What?

Q. The winter of 1904 and spring of 1905?

A. Yes, I saw there was a little. [84]

Q. How big a dump did he take out, Mr. Stevenson? A. I don't know.

(Witness continuing:) The dam that was built by the Moonlight Water Company in 1902 was two or three feet higher, as shown on Plaintiff's Exhibit "A" for identification, from S to U, and close down to U it got closer to the line, two or three feet in on the edge of the Grant claim. I don't know whether it was their intention to put the dam on the line between the Lyng claim and the Grant claim or not.

Q. Now, this drilling that was done by Mr. Brower and his assistants, the holes that were drilled between S and U on the ground, how far east of that dam that you described as being built by the Moonlight Water Company, were those holes?

A. Some of them were on the east side of the Lyng.

(Testimony of Louis Stevenson.)

Q. Some of them touched the dam, the back of the dam? A. Yes.

(Witness continuing:) They would have been two or three feet east of what we consider the dividing line between the two claims, and there were six or eight holes drilled between S and U and aside from those six or eight holes, there is one not very far from S and two further up. Our drill books show the first one to be about 30 feet deep and the second one 16 feet. I have had a good deal of experience in drill work while assistant superintendent for the Pioneer.

Q. How long would it take the ordinary drill man to dig a hole 16 feet deep in that character of ground?

A. That depends, sometimes a half a day and sometimes a whole day.

(Witness continuing:) He might or he might not be able to drill [85] a 30-foot hole in that character of ground in a day. The average of the holes was 32 feet. The bedrock does not crop almost to the surface just above S but it gets shallower near S. Further west from S limestone bedrock comes within 8 or 10 feet of the surface. We had no drill hole shallower than 16 feet. It might have taken Brower two or three days to drill the two holes near Q and the one near S, and when I say days I mean ten hours, but if he was drilling night and day with two crews, he might do it in thirty-six hours. The holes between S and U to my best recollection, were between 32 and 34 feet deep, getting deeper towards the point U.

Q. What was the character of the ground between



(Testimony of Louis Stevenson.)

S and U west and below the old dam that ran through there, the character of the surface?

A. Well, it is tundra, water running through there.

Q. It was soggy and wet? A. Partly so.

Q. A man working there or walking across it would go in to his knees?

A. No, not unless you happened to step in where there was a spring.

Q. There are places between the points S and U of and below this dam, where a man can hardly walk across in gum boots?

A. I walked over there a good many times and never went over my ankles.

Q. That wasn't a suitable place to drill?

A. They could have drilled.

Q. But they didn't? A. No. [86]

(Witness continuing:) In 1903 we had two men prospecting for the Pioneer on the lower end of this Bench No. 1. They worked northeast from the center stake of the Bob Lyng claim. They were prospecting east of the old dam.

Q. Who were the men?

A. I don't remember the names.

Q. I am asking about the Pioneer work?

A. I am talking about the Pioneer work.

Q. What were the names of the men?

A. I don't know.

Q. Did you employ them?

A. I don't think I did.

Q. What time of the year did they work?

A. September 18th to October 3d.

(Testimony of Louis Stevenson.)

Q. Isn't it a fact that at that very time that you are talking about, September and October, 1903, we were taking a dump out there on this disputed area, under defendants' title?

A. I didn't see anybody there at all except our men.

Q. In the fall of 1903?

A. In September when we were there there was nobody else digging there.

Q. You said September and October?

A. To October 3d.

(Witness continuing:) We had a cabin on the claim in 1903.

Q. Where was that cabin?

A. Do you want me to show you on the map?

Q. Yes, step to the map and show where that cabin was, mark it, write the word cabin and draw a circle around it.

A. I think that is where the cabin was, approximately.

(Witness marks cabin on Plaintiff's Exhibit "A" for identification.) [87]

A. (Continuing:) That is approximately where it was, it might have been ten or fifteen feet from that.

Q. That was without the ground in controversy?

A. It was.

Q. Did the Pioneer ever have any cabin or cabins within the ground in controversy? A. No, sir.

Q. At any time? A. No, sir.

Q. Did D. W. McKay, or Mr. Jensen or anyone

(Testimony of Louis Stevenson.)

else that was ever connected with the claim ever have a cabin on the ground in controversy to your knowledge?     A. Not to my knowledge.

Q. Do you know a claim by the name of the Jerome Fraction?

A. Well, I know some party jumped a portion and called it the Jerome Fraction.

Q. You do know of such a claim?

A. I know there was such a title.

Q. Just indicate to the Court, please, where the Jerome Fraction is, where you knew it to be?

A. The Jerome Fraction would be in here (indicating).

Q. Just trace it on the map for the Court, commence at any one point where you knew it to be and run around it.     A. I have never seen a stake.

Q. The Pioneer Mining Company owns the Jerome Fraction, does it not?

Mr. SCHOFIELD.—Objected to as wholly immaterial, incompetent and not cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [88]

Q. Mr. Stevenson, is it not a fact that the work done by the men in 1903, by the Pioneer Mining Company, was done in the neighborhood of the letters U and V and W on the map, and that it was done, that all of the work was done for the Jerome Fraction?

Mr. SCHOFIELD.—Objected to as immaterial.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there



(Testimony of Louis Stevenson.)

excepted and the exception was allowed.

Q. Did you personally sign an affidavit, proof of labor, for the year 1903, with reference to the ground known as Bench No. 1, for the Pioneer Mining Company?     A. I believe I did, I think I did.

Q. Did you sign an affidavit, swearing to the work that was done on the Jerome Fraction for the year 1903?

Mr. SCHOFIELD.—Objected to as wholly immaterial, not proper cross-examination and incompetent.

Mr. GILMORE.—It goes to the question of the good faith of this location.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. Is it not a fact, Mr. Stevenson, that the cabin you have testified to in your direct examination about being on the lower end of Bench No. 1 in the year 1903, was put there by the owner of the Jerome Fraction and not by the Pioneer Mining Company for Bench No. 1?

A. It is not. I was there, I hauled it over there myself.

Q. Isn't it a fact that that cabin was put there because that ground was then claimed by the Pioneer Mining Company not as Bench No. 1 but as the Jerome Fraction? [89]     A. It is not.

Q. Did you make and file for record a proof of labor for the Jerome Fraction in 1904?

Mr. SCHOFIELD.—Objected to as wholly imma-

(Testimony of Louis Stevenson.)

terial and incompetent, and not proper cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Witness continuing:) I stated in my direct examination that Mr. Lindeberg and I were on the lower end of this Bench No. 1 claim for the purpose of looking at this Winter Fraction, that claim that the Pioneer had an option on. One of the Winter Fraction stakes is at “W” and one of the other stakes is at point “A.”

Q. Then the southerly part of your so-called Bench No. 1 being the part between A, V and W, was embraced within this Winter Fraction location?

A. That was an overlap.

(Witness continuing:) The overlap was 12 or 15 feet; I don't think it was as much as 50 feet, I never had it surveyed. I know a surveyor named E. Franklin Lewis. I never saw him on the ground and don't know whether he made a survey or not. While he was surveying in 1903 I was on Discovery Anvil. I verified the complaint in this action for the Pioneer Mining Company.

Q. Your complaint alleges that Bench No. 1 is 720 feet long on the upper end?

A. I don't remember the complaint.

Q. The complaint also alleges that the description was taken from Mineral Survey No. 608, was that the Lewis Survey? [90]

Mr. LOMEN.—That is assuming something not in

(Testimony of Louis Stevenson.)

evidence. That is misleading. I wish counsel would refresh his memory.

Mr. GILMORE.—So there will be no dispute about it, I will read you from the complaint, Mr. Stevenson: “Bench No. 1 Moonlight and described by metes and bounds as follows: Commencing at Stake No. 1, the northwest corner, from which U. S. Monument No. 2 bears N.  $4^{\circ} 27'$  E. 670.2 feet; thence S.  $65^{\circ} 2'$  E. 730 feet to stake No. 2.”

A. (Continuing:) If the complaint calls for 730 feet on the upper end it must be wrong. We were only claiming 600 feet.

Q. And if the description says—I am not going to read the whole paragraph to you, it winds up by saying Survey 608 at the bottom of the description in your complaint, if this description is taken from the land office records, Survey No. 608, Mr. Lewis must have surveyed at some other point than Q?

Mr. SCHOFIELD.—Objected to as assuming that Mr. Lewis made a survey.

Mr. GILMORE.—Survey No. 608 in the complaint is in evidence. Mr. Lindeberg testified that he employed Mr. Lewis and Mr. Lewis made the survey. I am trying to break the witness down on the question of the northwest stake. The plaintiff is claiming it in two places, one in the complaint and the other in the map.

The COURT.—Objection sustained. To which ruling of the Court the defendants excepted then and there, and the exception was allowed. [91]

Q. At the point Q you say there is one solitary



(Testimony of Louis Stevenson.)

stake standing on the ground?      A. Yes.

(Witness continuing:) There was no mound. The ditch was constructed through there, and the stake was down for a year. I never knew the Pioneer Mining Company claimed the corner at the point P. There was nothing done at the point W on the ground in 1903. The mound at the point W was identical with Bob Lyng's Moonlight stake. The southwest corner of the Bob Lyng claim was, in 1903, where I saw the 2x4 stakes scribed M. B. The stake I took for the Moonlight stake. I don't know whether the old original Jerome stake stood there or not, as I could not find any marking on the willow stakes. I was living in Nome in the winter of 1902 and spring of 1903 in charge of the Pioneer affairs.

Q. Were you in charge of the Pioneer Mining Company's affairs at the time the Moonlight Water Company sued Howard and Doverspike?

Mr. COCHRAN.—Objected to as immaterial, not proper cross-examination.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Mr. GILMORE.—I offer to show by the witness, if the Court please, that he was out on the ground in controversy in the fall of 1902 and the spring of 1903 and that he saw Mr. Howard and Mr. Doverspike and four or five other men take out a winter dump on the premises in dispute, and that he knew they were working and mining the ground in controversy.

(Testimony of Louis Stevenson.)

Mr. COCHRAN.—I don't think your Honor should pass [92] upon that at this time. The question asked was if he was there when the suit was brought by Howard and Doverspike.

The COURT.—Objection sustained.

Mr. GILMORE.—Will your Honor rule upon the offer made?

The COURT.—I will not.

Mr. GILMORE.—We take an exception to the Court's refusal to rule on the offer. Exception allowed.

(Witness continuing:) I might have been over the ground in controversy in the fall of 1902 and spring of 1903. I did not know Doverspike very well. I knew Howard, I wasn't very well acquainted with him. I knew some men were there; I had nothing to do with the claim, at that time; I never knew that we had anything to do with that claim in the winter of 1902 and 3. In the fall of 1905 and in the spring of 1906 I was on the ground in controversy. I did not see any men working there. I was over the ground a number of times. We were working right below there.

Q. Do you remember about the time Mr. Bard assigned his lease or issued a lease to some Russians that worked there?

Mr. SCHOFIELD.—Objected to as assuming something not in evidence.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

(Testimony of Louis Stevenson.)

(Witness continuing:) I would not deny that the Russians worked there. I don't remember seeing anybody working there in the winter, fall and spring of 1905 and 6. I never saw any cabin on the ground in controversy then. [93]

Q. Now, this Anvil ditch that you talk about digging around there, that was taken there for the purpose of bringing the Anvil water around to use on the Portland Bench and Discovery, that was the purpose? A. Partly so.

Q. That was the main purpose? A. No, sir.

Q. To get the water down there and use it on your mining works wasn't that the reason that that spillway on the side towards the Portland Bench was built?

A. When we built that we didn't know there was to be any Portland Bench.

Q. Yes, but you did know there was gold on the flats around Moonlight? A. Yes.

Q. Before you got it completed pay had been discovered by Mr. Brown in the fall of 1904?

A. It had not.

Q. At that time you didn't assume there was pay down on Moonlight?

A. We did on the southwest corner of the Winter Fraction.

Q. Why did you bring it around to this point, I mean south of the point N, that is the end of the ditch, why was the ditch put in there?

A. I can't give you any special reason.

Q. Wasn't it put there for the purpose of ground-



(Testimony of Louis Stevenson.)

sluicing down here at Little Creek?

A. We have never ground-sluiced at Little Creek.

(Witness continuing:) We have been mining down in the southwest corner of the Bench.

Q. By southwest corner you mean down at point W? A. I do. [94]

Q. And not on the ground in controversy?

A. No, sir.

Q. Have you ever used the water of this so-called Anvil Ditch on the ground in controversy or in dispute, for mining purposes? A. No, sir.

Q. Now, Mr. Stevenson, you told the Court about spending a lot of money every year cleaning this ditch out, shoveling dirt and snow from the ditch. You do the same thing on your ditch clear around to Anvil? A. We do.

(Witness continuing:) There is about 200 feet of the Anvil ditch on the Grant claim not in controversy; that is the part of the ditch that comes in on the corner of the Grant claim across near the railroad track.

Q. You do the same character of work on that part of the ditch that you do on the ditch that is inside of the ground in controversy? A. Yes, sir.

Q. You don't claim ownership of that piece of ground of the Grant claim by virtue of your ditch running across there and the work that you do every year? A. No.

Q. Now, this Anvil ditch runs across several claims that the Pioneer doesn't own? A. It does.

(Testimony of Louis Stevenson.)

Q. It runs across Mr. Hepburn's claim over here?

A. Yes.

Q. You don't claim that? A. No, sir.

Q. And you clean that out every year?

A. Yes, sir. [95]

Q. And it costs you the same per lineal foot?

A. It does.

Q. Those pipe-lines that you told Mr. Lomen about, they run across the Grant claim that is not in dispute? A. Not any of those mentioned.

(Witness continuing:) The surveyor has the pipe-line dotted as running from the upper ditch, it is not there now. It used to be.

Q. You don't claim this piece of the Grant claim by virtue of that pipe-line running across there?

A. No, sir.

Q. There are a great many of your pipe-lines that run on ground that is not in controversy?

A. There is out on the Miocene ditch.

Q. From the Miocene ditch down to the lower levels, where you are mining you have pipe-lines crossing claims owned by the Pioneer by virtue of the pipe-line? A. No, sir.

Q. Isn't it a fact that those pipe-lines are laid across there for the convenience of mining on the lower levels down here (indicating)?

A. Well, to mine the other claims and this claim also.

Q. Wasn't that the purpose of putting those pipe-lines across there, to get them down to where you are mining down below on the lower claims?

(Testimony of Louis Stevenson.)

A. Partly so.

Q. Practically so, isn't it?

A. No, we laid some pipe-lines to mine around W in this claim.

Q. I am speaking about the other claims down here, you laid the pipe-lines in order to mine these claims down here in this locality, whenever a pipe-line becomes out of position for [96] proper mining you lift it up and put it in another place, change it.

A. Well, we relay it.

Q. You have done that time and time again around there?

A. A good many times.

Q. You took a pipe-line running around the southwest corner of the Lyng claim, you have lifted that up two or three times?

A. It has been changed.

(Witness continuing:) It has been changed from where it was originally.

Q. Now, aside from this work done in shoveling the ditch out every spring, and aside from the work in laying these pipe-lines across the disputed ground, and aside from the drilling that Mr. Brower did along the line here, that you told about, these two holes, will you tell the Court when, if ever, the Pioneer Mining Company did any work within the disputed area, who did it, and when?

A. 1903 and 1907. That is the only time that I know we did any work within the disputed ground, then I know Charlie had some men when Bard was working.

Q. Just state what you know.



(Testimony of Louis Stevenson.)

A. Yes. 1903 and 1907.

Q. Now, the 1907 work was the drilling work?

A. It was.

Q. I ask you to eliminate that, you have described that in detail to the Court. Besides the work you did in cleaning the ditch every spring, laying the pipe-lines and the drilling done by Mr. Brower, what other work, if any, did the Pioneer ever do, since it owned Bench [97] No. 1 within the ground in controversy, the time when it was done, and who did it?

A. You want me to eliminate the prospecting in 1903?

Q. Not if there was any prospecting done within the ground in controversy in 1903, I want to know when it was done, and where it was done, and who did it. Will you step to the map and show me where it was. Mark it approximately where you claim the Pioneer Mining Company did some work in 1903.

A. I would place it in here. (Witness draws a circle east of the point S.) (Continuing:) The work was done from September 18th to October 3d. I don't know the name of the person who did it. I can't tell you the name.

Q. I ask you if you don't know it to be a fact that Mr. Hopkins was working at the time you claimed the Pioneer Mining Company was working?

A. Hopkins was working further south.

Q. Draw a circle around where Mr. Hopkins was working.

(Testimony of Louis Stevenson.)

A. I believe in here. (Witness marks a circle with letter "H" in center on Plaintiff's Exhibit "A.")

Q. How far from where Mr. Hopkins worked would it be to where you claimed the Pioneer worked at that time, 1903?

A. About 50 feet. 50 or 75 feet.

(Witness continuing:) The character of the work done at that point by the Pioneer was prospect holes. I don't remember how many. I walked up that way with Mr. Lindeberg when they were working there and I saw them a couple of times. I was at Discovery on Little Creek and Mr. Lindeberg asked me to pick out two men to go over there and prospect. I saw them when we passed by. I couldn't give you their names.

Q. How is it that you remember who it was did the work down [98] at this end of the claim when you can't remember this?

A. I haven't stated any names.

(Witness continuing:) The Pioneer kept a record of the work that was done. That is the only prospecting work that we ever did inside of the lines in controversy.

Q. Is it not a fact that at all times since you knew of that claim in 1903 you knew that the Pacific Coal & Transportation Company have had men working on the ground in controversy, and have been claiming the ground in controversy?

A. I knew they had men out there in 1903, and 1904 and 1905, and when that drill was there in 1907,

(Testimony of Louis Stevenson.)

and then when Mr. McCumber was there.

Q. When did you first see Mr. McCumber on the ground in controversy, or his men?

A. In the fall of 1909, but remember Mr. Gilmore I was out from here in the winter of 1908 and 1909, I wasn't here.

Q. I understand, I am trying to find out when you first saw Mr. McCumber's men on the ground in controversy? A. In the fall of 1909.

Q. Where were they working?

A. Very close to the letter U.

Q. Right up where the letter M is in the circle?

A. Very close.

Q. What were they doing there in the fall of 1909?

A. Starting to sink a shaft.

Q. How long did they work there?

A. They were there until along towards spring.

Q. All winter? A. Yes.

Q. How many were working? [99]

A. Only two.

Q. Did you know them?

A. Only by sight, I knew the one on top that I used to speak to.

Q. Did you ever see Mr. McCumber out there at that shaft?

A. I have seen him there, but I wasn't close, I seen *his* at a distance.

(Witness continuing:) They dug two shafts there, one a little closer to the line than the one you speak of. I believe they timbered the big one, the



(Testimony of Louis Stevenson.)

big shaft. I know they had a boiler there, do not know whether they had any pumps or not. I saw water coming down the pipe. I went over there but I didn't examine the ground in the spring of 1910, and I did not pan on their dump to my recollection. I didn't discuss with the men in charge whether or not they had found pay and prospects. I knew about the prospects. Mr. McCumber's men were living at that time, 1909 and 1910, in a cabin at the northeast corner.

Q. Red Cabin? A. Yes, sir.

Q. Will you mark on your map where that cabin was, and write red cabin and draw a circle around it, approximately where it was?

(Witness writes "red cabin" and draws a circle around it.)

Q. The red cabin was there in the fall of 1909?

A. It was. (Witness continuing:) I saw the cabin there in the fall of 1909.

Q. And that was within the ground in controversy? A. Yes, sir.

Q. And that cabin has been there in the same place ever since? A. It has.

Q. And that cabin was on the ground at the time you started this suit? [100] A. It was.

Q. And you knew it was Mr. McCumber's cabin, occupied by his men?

A. I didn't know who owned it; I knew it had been occupied.

Q. Now, along in 1909, along about that time, the Pioneer tried to buy this ground, Mr. Stevenson,

(Testimony of Louis Stevenson.)

prior to the time you brought this suit?

Mr. SCHOFIELD.—Objected to as wholly immaterial, not proper cross-examination.

Mr. GILMORE.—Men don't usually run around trying to buy someone else's ground if it belongs to them.

The COURT.—I don't know that that is very much of an argument. Objection sustained. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. During all of the time that Mr. McCumber's men were mining there you knew, of course, that they were claiming the ground in controversy under the Grant title? A. I did.

Q. And you knew that Mr. Bard and Mr. Muther were claiming under the Grant title?

A. I didn't know under what title they were claiming. I didn't know of the Grant claim at that time.

(Witness continuing:) At that time I had a talk with Mr. Bard but I don't remember what he told me. Sometime after I knew they claiming under the Grant title.

Q. Was the work that was done by Mr. Doverspike and Mr. Howard open and visible to any one passing there, the work they did in 1902 and 1903?

A. I guess it was. When they were on top of the ground.

Q. State to the Court whether the work done by Mr. Hopkins was open and visible to any one passing. [101]

(Testimony of Louis Stevenson.)

A. The man on the windlass would be seen by anyone passing.

Q. Was there a dump in sight?

A. A small dump.

Q. Now, the work done by Mr. Bard and Mr. Muther was that open and visible to anyone passing?

A. Not open, but the windlass would show on top of the ground.

Q. If there were any dumps thrown up by Mr. Bard they would be seen from the railroad track?

A. Yes.

Q. Now, you sent Mr. Mathieson and Mr. Nelson out there to work on the 6th of November, 1910?

A. I did.

Q. Told them to start digging a hole?

A. Yes, sir.

Q. You did that for the express purpose, as you told Mr. Lomen to start this lawsuit, claim you were in possession?

A. I wouldn't state that was the express reason.

Q. Didn't you talk to Mr. Lomen in his office first?      A. Yes.

Q. He told you to get a couple of fellows out there and start digging, then he would start a lawsuit and quiet title?

A. I don't know, I know I talked to Mr. Lomen about the lawsuit.

Q. Mr. Lomen told you to take a couple of fellows out there and start digging, then he would start a lawsuit and quiet title?

A. We discussed that before starting the lawsuit.



(Testimony of Louis Stevenson.)

Q. That was the reason you took Mathieson and Nelson out and started them to work?

A. I intended to ground sluice, the same as I had always done, [102] prospect and ground sluice.

Q. Would you deny that was the reason?

A. No, I wouldn't say that.

Q. Was it for the same reason that you went out on the 7th to see if anybody was in the red cabin?

A. On what 7th?

Q. The red cabin?

A. The day after Mathieson went to work? I was looking to see if anybody was around there.

Q. Did you go into the cabin to see if anyone was in the cabin?

A. I didn't go in, I was around the cabin.

Q. You don't know whether there was a man inside of the cabin or not on the 6th or 7th of November?

A. I was not up there around the cabin.

Q. How long were you out there?

A. I lived on Little Creek all fall.

Q. How long were you out on the claim where Mathieson was working on the 6th?

A. I don't know.

Q. Were you there an hour?

A. I might have been.

Q. Were you there over an hour?

A. I wouldn't state, I never looked at my watch.

(Witness continuing:) I don't know how long I was there; I would not say whether I was on that claim an hour or two hours but I was up in that vicinity the most part of the forenoon. I couldn't

(Testimony of Louis Stevenson.)

state whether I was on Bench No. 1 the afternoon of the 6th or not, and I can't state whether I was there on the night of the 6th or not. I was wandering around there every day. [103]

Q. Were you on the ground in controversy the morning of the 7th of November, 1910?

A. I must have been.

Q. Were you there?

A. I passed every day, I am sure.

Q. And how long a time each day did you pass there? A. Oh, not so long.

Q. A few minutes? A. More or less.

Q. You didn't go into the cabin to see if there was anybody there?

A. I never went into the cabin, I was around it.

Q. That was the day the lawsuit started, the 7th of November? A. The record will show the date.

Q. You were out there that specific date to see if Mathieson was digging on the lower end of No. 1 and to see if anyone was on the ground in controversy?

A. I knew from indications there was nobody living in the cabin. Coming over from Little Creek I could see pretty well over the claim.

Q. You were out on the ground in controversy on the 7th?

A. The men were digging there and I was looking after it.

Q. Were you there for the purpose of giving evidence in this lawsuit?

A. I don't know as I was.

Q. That was your purpose in going, so you could

(Testimony of Louis Stevenson.)

come into court and say you were digging on the 7th?

A. I know I was there.

Q. The Pioneer didn't have anybody on either the 6th or 7th of November, 1910, working or mining in any way whatever on the ground in controversy?

A. No, sir, it had not. [104]

Q. And it has never had anyone mining in any way whatever since the 7th day of November, 1910, on the ground in controversy? A. No, sir.

Redirect Examination.

Q. What observations did you make at that time with reference to the cabin being occupied or not, when you were there?

A. There was no stove-pipe on the cabin.

Q. And how was the temperature of the weather at that time?

A. Well, that I don't remember. I believe it was perhaps a little colder last fall than this year, but what the temperature was, I don't know.

Q. You did observe that there was no stove-pipe?

A. Yes.

Q. Did you observe whether there was any smoke coming out? A. I didn't see any smoke.

Q. Did you try the door of the cabin at that time?

A. No.

Q. Did you see any evidences as to whether the cabin was or was not occupied, and if so, what did you see?

A. I did not see anything at all; it was all quiet around the cabin and no sign that anybody was living in the cabin at that time.



(Testimony of Louis Stevenson.)

Q. Was there snow on the ground at that time, do you know?     A. Very little.     [105]

**Testimony of J. A. Bachelder, for Plaintiff.**

J. A. BACHELDER, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is J. A. Bachelder. I live in Nome, have resided here since 1907. Engaged in the banking business and have been engaged in that business for 15 years, and acted as paying teller all that time. Am familiar with the handwriting of a great many people so that I can identify them at sight.

Q. I show you the original signature of Andrew Jensen attached to deposition in this case. Look at it closely. (Witness examines signature.) Now, I will show you purported signature of Andrew Jensen, being attached to a purported notice of location of a mining claim marked for identification Exhibit "I." State whether in your opinion the two signatures were made by the same person, the one in the notice and the one in the deposition.

A. I should say that those were made by the same man.

Q. Andrew Jensen?     A. Yes, sir.

**Cross-examination.**

I have been in the employ of the Pioneer Mining Company during the past summer as bookkeeper, but I am now in the employ of the Miners and Merchants' Bank of Nome. The signature of G. W. Price, deputy, at the foot of the page, and also the signature on the back of the notice (Exhibit "I")

(Testimony of J. A. Bachelder.)

for Identification) were written by the same person I should say.

Q. Is the word "Nelson" there in the same handwriting as the body of it? [106]

A. You mean is that the same?

Q. No, is this pencil writing the same handwriting as the body, the rest of the instrument?

A. No, I shouldn't say it was.

Q. Is the body of this instrument in the same writing as the words "Andrew Jensen"?

A. It is hard to tell, I should say not.

#### Redirect Examination.

Q. I will ask you, Mr. Bachelder, whether the signature, the purported signature of O. Schuler appearing on the face of Exhibit "I" for Identification is in the same handwriting as the body of the instrument?

A. Yes, I should say it was the same.

(Witness continuing:) By comparison I would say that the person who wrote the name C. L. Spanggard did not write the name O. Schuler or the body of the instrument, and in the same manner I would say that the person who wrote the signature Andrew Jensen, did not write the names O. Schuler and C. L. Spanggard. [107]

#### Testimony of Fred Cowden, for Plaintiff.

FRED COWDEN, a witness on behalf of the plaintiff, recalled.

Q. What is the record I show you at the foot of page 64?

A. A record of Bench claim No. 1 Moonlight, as

(Testimony of Fred Cowden.)

located by Andrew Jensen.

Q. Offered in evidence yesterday? A. Yes, sir.

Q. I ask you to examine the signature of G. W. Price, Deputy, at the foot of that instrument, at the foot of that page, and also examine the signature on the back of the notice Exhibit "I" for identification, and state whether in your opinion the person who wrote that and the one who endorsed that instrument Exhibit "I" for identification, G. W. Price, Dpt., is the same person who signed the record offered in evidence as G. W. Price, Deputy? A. It seems to be.

(Witness continuing:) I am not familiar with the signature except as it appears in the records and from such familiarity I would say that he had endorsed that certificate. I am familiar with the signature of C. L. Spanggard, I had seen his signature a number of years ago; as soon as I saw this I thought it was his signature. To the best of my knowledge it is his signature on Exhibit "I" for identification.

Mr. LOMEN.—We offer the original notice of Andrew Jensen in evidence at this time.

Mr. GILMORE.—On behalf of the defendants we object to the offer on the ground of insufficiency of proof. There appearing at this time no proof [108] whatever that this record was made at the time it purports to have been made, to wit, on the 2d or 3d day of January, 1899, even if admitting that the signatures were genuine.

The COURT.—Objection overruled. It may be received and marked Plaintiff's Exhibit "I." To which ruling of the Court the defendants then and



there excepted and the exception was allowed. Said exhibit being as follows:

**[Plaintiff's Exhibit "I."]**

"Bench Claim No. 1.

Cape Nome Mining Dist. Jan. 3.

Moonlight Creek.

I the undersigned claim 1320 feet toward Anvil Mountain and 600 feet toward Moonlight Creek being bounded north west by Moonlight Claim, east by Nelson's Claim.

ANDREW JENSEN.

Witnesses:

O. SCHUELER.

C. L. SPANGGARD.'" [109]

**Testimony of Arthur Gibson, for Plaintiff.**

ARTHUR GIBSON, recalled by plaintiff, testified as follows:

I became familiar with the ground in the vicinity of Bench No. 1 on Moonlight in 1901. I know a claim conflicting with No. 1 Bench Moonlight, known as No. 2 on the east fork of Moonlight. I made a survey of No. 2 east fork of Moonlight in 1901. I made the survey on the 23d of June, 1901. I saw some stakes near the point "A," as shown by Plaintiff's Exhibit "A," also some willow stakes at the point V, or somewhere about there. I do not remember how many stakes there were. I did not make any examination as to any markings upon the stakes at that time. The reason I went to that point was we were making a survey of No. 2 east fork, Moonlight. I was ahead of Mr. Fred Williams, who was

(Testimony of Arthur Gibson.)

with me, one of the owners of No. 2 east fork, who assisted me in surveying. I went down there to take the stake notes, presuming that was one of the corners, but he called me over to point A for his stake. I did not make any examination of the stakes at the point V with reference to any writings or markings.

Q. Now, when did you make the survey of No. 1 Bench Moonlight?

A. I started in making the survey, an adverse survey of No. 2 East Fork on September 9, 1902.

Q. When did you make the actual survey of Bench No. 1 on Moonlight? A. On September 9th, 1902.

Q. Who, if anyone, was with you or assisted you in making that survey? A. Mr. Spanggard.

Q. Who else, if anyone, was with you? [110]

A. I don't recall whether Mr. D. W. McKay was with me at that time or not, I think he was but I am not positive.

Q. Who else, if anyone?

A. There was one or two of the owners of No. 2 East Fork, either one or both, Mr. Fred Williams.

Q. Was Mr. A. G. Kingsbury present?

A. Not at that time.

(Witness continuing:) The first stake we went to was at the point indicated on the map as H. In making the survey of No. 1 Bench on Moonlight, that is the first stake that Mr. Spanggard and myself went to; then we went to W.

Q. What stakes did you find there?

A. 2x4 pine stakes marked with pencil SW. corner of the Riparia placer mine, old willow, no writing visible.

(Testimony of Arthur Gibson.)

Q. Old willow stake, state whether or not that was identified by anyone.

Mr. GILMORE.—Objected to as calling for hear-say evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Identified by Mr. Spanggard.

Q. Identified as what?

A. As the southwest corner stake of Bench No. 1.

Q. Do you know Mr. C. L. Spanggard?

A. I do.

Q. What did you do at that corner, if anything, did you erect any other stakes at that corner, that is what I mean? A. Yes, sir. [111]

Q. State to the Court what stakes, if any, you erected there?

A. I afterwards erected a 2x4 pine stake and scribed it S No. 1, M. B.

Q. M. B. what was that? A. Moonlight Bench.

Q. Now, at the point N did you make a survey of that point? A. I did.

Q. And what stakes, if any, did you find at that point, Mr. Gibson, when you made the survey in 1902?

A. 2x4 pine stake, scribed NW. corner. Two willow stakes, one broken in two, no writing visible on either, small stone mound.

Q. State whether or not any of those stakes found at that point were identified by anyone as being the Bench No. 1 Moonlight stakes, yes or no. A. Yes.

Q. Who identified it and what did he identify it as?



(Testimony of Arthur Gibson.)

Mr. GILMORE.—Objected to as calling for hearsay evidence and trying to prove something somebody else knew about the ground through the mouth of this witness.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Mr. C. L. Spanggard said that one—

Mr. GILMORE.—Objected to as hearsay.

Q. What did he identify the stakes as; I don't care what he said, what did he identify them as?

Mr. GILMORE.—Objected to as hearsay.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed. [112]

A. As the corner of—the northeast corner of Bench No. 1 Moonlight.

Q. Did he identify any other corner at that place, of any other claim? A. Yes.

Mr. GILMORE.—The same objection, calling for hearsay evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. The northwest corner of the Nelson Bench.

Q. What stake, if any, did you erect at that point marking the boundary line of Moonlight Bench No. 1?

A. 2x4 pine stake, scribed S No. 3, M. B. Notice of survey tacked on top.

Q. State whether or not you surveyed to point Q

(Testimony of Arthur Gibson.)

on the map. A. I did.

Q. Was there any stake there? A. No, sir.

Q. State whether or not that point was identified by anybody as a corner of Bench No. 1 Moonlight, and if so, by whom? A. It was.

Q. By whom?

Mr. GILMORE.—Objected to as calling for hear-say evidence.

The COURT.—Objection overruled. Exception allowed.

A. By Mr. Spanggard.

Q. Now, at point Q I would like to ask you if Spanggard identified that as a corner of Bench No. 1 Moonlight? A. Yes.

Q. Who? [113]

Mr. GILMORE.—Objected to as calling for hear-say evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Mr. C. L. Spanggard identified it as the North-west corner of Bench 1 Moonlight.

Q. Now at point V did you make a survey at that point?

A. I did. (Continuing:) That is the point which I have already testified to that I saw the willow stakes.

Q. Was there any willow stake there at the time you made the survey of No. 1 Bench Moonlight?

A. No.

Q. State whether or not that point was identified

(Testimony of Arthur Gibson.)

by anyone as a corner of Moonlight Bench No. 1.

A. Yes.

Q. Who identified it?

Mr. GILMORE.—Objected to as calling for hearsay evidence.

The COURT.—Objection overruled. To which ruling of the Court the defendants then and there excepted and the exception was allowed.

A. Mr. C. L. Spanggard.

Q. State whether or not the point identified by Mr. Spanggard is the point that you first saw the willow stake at when you made the survey on June 23d, of No. 2 East Fork Moonlight.

A. As near as I can tell from memory.

(Witness continuing:) I erected a stake at point V marking a corner of No. 1 Bench Moonlight. It was between the 9th and 30th of September, 1902, that I erected the stake at that point. [114] I placed a 2x4 pine stake at that point scribed S. No. 2 M. B. and placed a survey tack on top. I placed a 2x4 pine stake marked S. No. 4 M. B. and survey tack on top at the point Q.

Q. When were those stakes erected, the four of them, the four stakes you have testified to, when were they placed there by yourself?

A. I haven't got the exact date when I erected them, it was in September, 1902, during the month of September, 1902.

Q. By whom were you employed to make that survey and erect those stakes?

A. By Mr. D. W. McKay.



(Testimony of Arthur Gibson.)

Q. Now, where was stake No. 1 on this claim, Mr. Gibson?     A. At point W.

Q. And from that point where is No. 2?

A. At V.

Q. And No. 3?     A. At N.

Q. No. 4?     A. At Q.

(Witness continuing:) I have been familiar with that claim since that time.

Q. State whether or not those markings have been on the claim since they were put there by you in 1902, fixing those boundaries.

A. So far as I know with the exception of the corner W. That is the southwest corner of Moonlight Bench, that I replaced; twice it has been mined out; it is there now, but it is covered up by tailings.

Q. Now, commencing at corner No. 1 Moonlight Bench No. 1, will you give me the course and distance from that to corner No. 2 designate it to the Court, from stake No. 1, the southwest corner? [115]

A. That would be point W; thence south  $60^{\circ} 12'$  east, 741.5 to stake No. 2, southeast corner at V.

Q. And from there to corner No. 3, or the point N, will you give the course and distance?

A. Thence north  $40^{\circ} 1'$  east 986.8 feet to stake No. 3, or the northeast corner at N.

Q. And from stake No. 3 to stake No. 4 will you give us the course and distances, stake No. 4 being point Q as designated on the map?

A. North  $60^{\circ} 12'$  west 600 feet to stake No. 4, or the northwest corner.

Q. And give me the courses and distances now from

(Testimony of Arthur Gibson.)

corner No. 4 to the point of beginning or stake No. 1?

A. South  $47^{\circ} 51'$  west 1021.3 feet to stake No. 1.

Mr. COCHRAN.—At this time I ask permission to amend the complaint to conform with the proof by setting forth the descriptions as just delineated and I ask leave to amend the complaint by substituting the descriptions which I offer at this time, reading as follows: Commencing at stake No. 1 which is identical with the southwest corner of Riparia placer mining claim and the northwest corner of placer claim No. 2, giving the courses and distances just as Mr. Gibson has given them, which I have checked up very carefully. That is I believe admissible under the code at any time if there is no objection.

Mr. GILMORE.—We make objection, if the Court please, to the amendment; it is an apparent variation of [116] the survey description in the complaint, the complaint alleging Mineral Survey No. 608. In its complaint plaintiff alleges that their northwest corner was 730 feet from the point N, the northeast corner and we have come here prepared to meet that issue and now, after they come into court, in the middle of the trial, they want to switch one of their corners of the claim 130 feet.

The COURT.—It is always in point to abandon any portion of the ground.

Mr. GILMORE.—I suppose they can abandon it all if they wish, but they were relying in their complaint on the Lewis survey, Survey No. 608, and we

(Testimony of Arthur Gibson.)

came here to meet that survey.

The COURT.—The amendment will be allowed. It may be attached to the margin, the original description may remain the same.

(To which ruling of the Court the defendants then and there excepted and the exception was allowed.)

Q. Now, Mr. Gibson, the map which you have been testifying in relation to, marked Exhibit "A" for identification, I believe you have answered that correctly represents the objects made upon the map from actual surveys? A. All except the pencil marks.

Mr. COCHRAN.—I offer the map in evidence.

Mr. GILMORE.—I would like to have the right to cross-examine the witness on the map before the Court passes on the offer.

The COURT.—Proceed. [117]

Cross-examination.

Q. Were you present on the ground the day the DePue Bench was staked? A. I was not.

Q. When was the first time you were ever on the DePue Bench?

A. June 23, 1901. (Continuing:) I saw the northwest corner of the DePue Bench at that time, that would be the point J on the map. I surveyed the Napa claim September 30, 1902. From my own knowledge I know the Napa claim is a relocation of the DePue Bench.

Q. Do you know whether or not the Nelson and the Carlson are the same, of your own knowledge?

A. Before I answer the question I want an explanation.



(Testimony of Arthur Gibson.)

Q. I would rather have the answer first?

A. But I want an explanation from you.

Q. I will make any explanation I can. What is it you want to know?

A. If the stakes are identified to me as by one of the locators and witnesses, is that sufficient to say that I know of my own knowledge?

Q. No, not the view I take of it, unless you were familiar with the claim and know it of your own knowledge.

The COURT.—That is absolutely something that has never been required of any surveyor that has ever brought a map in here before, and it is not going to be required now.

Mr. GILMORE.—Your Honor never permitted a map in evidence with a lot of writing on it that has not been proven and no other court has ever allowed it.

The COURT.—Proceed.

Q. When did you ever survey the Carlson location?

[118]

A. I didn't survey the Carlson location myself.

Q. Did you ever survey the Carlson?

A. Not for the owners.

Q. Did you ever do it for anybody?

A. I tied in the stakes.

Q. You tied in the Carlson location, the lower end at the points H and G?      A. I did.

Q. And for several years you had in your notebook, and in your files, a map showing the Carlson location running from a point near L over at the top

(Testimony of Arthur Gibson.)

to point N and running down to H and G across the map? A. I did make a survey of it.

Q. And did you have a map as I have outlined?

A. Yes, sir.

Q. And you furnished a map like that to the owner of the Napa Bench?

Mr. COCHRAN.—Objected to as immaterial.

The COURT.—Objection sustained, to which ruling of the Court the defendants then and there excepted and the exception was allowed.

Q. When was the first time that the Carlson claim was surveyed or marked on the ground to your knowledge in its present form, as shown on that map by the letters N, J, G and H?

A. That is a question I couldn't answer.

Q. When was the first time you knew it to be marked on the ground?

A. When Mr. Spanggard identified the Nelson location to me.

Q. I am not asking you about the Nelson location. I am asking [119] you about the Carlson?

A. The Carlson location is a relocation of the Nelson.

Q. I ask you when was the first time you found the Carlson stakes marked as they are marked on that map?

Mr. COCHRAN.—Objected to for the reason that the witness has never testified that he ever found any stakes of the Carlson location.

The COURT.—Objection sustained. To which ruling of the Court the defendants then and there

(Testimony of Arthur Gibson.)

excepted and the exception was allowed.

Q. Did you ever find the Carlson location marked as you have it now on this map, this exhibit, just answer yes or no?

A. I haven't been to all corners, but those corners I have been to I found.

Q. What corners did you find?      A. G and N.

Q. You never at any time found the Carlson location marked on the ground as shown by J and H?

A. I haven't been over to those corners.

Q. Where did you get your information from, Mr. Gibson, that the Carlson location is a relocation of the Nelson Bench, was that told you by somebody?

A. No, sir; from the records.

Q. Now, Mr. Gibson, tell the Court whether or not there is anything on the Moonlight claim, any dam or anything, to indicate a dam, at the point where it is marked dam on this map, at the present time?

A. No, sir.

Q. Has there been any dam there to your personal knowledge for several years, where you have it marked "dam" and [120] "reservoir"?

A. I don't recall how many years it is that they changed the dam, moved it further north.

(Witness continuing:) I got that information about that dam from my survey of 1902, the Moonlight Water Company's dam was there at that point then.

Q. Where are the Moonlight Springs at the present time with reference to where you indicate them on this map?



(Testimony of Arthur Gibson.)

A. The Moonlight Springs are shown there in words, I didn't write the letters quite big enough to cover all the springs.

(Witness continuing:) On the ground at the present time the intake of the Moonlight Water Company is inclosed with a barbed-wire fence in the form of a circle. The Moonlight Springs are just above the intake of the Moonlight Water Company. The Point S on the map represents the upper center stake of the Lyng Moonlight claim and the initial stake of the Grant claim.

Q. On the map you have it marked "steep bank." Where is that bank on the ground, with reference to the initial stake of these two claims, is it south of it or is it north of it?

A. All that ground is sloping in there; it is an easy slope, and the steep bank gradually slopes off to an easy slope there.

Q. Will you testify to the Court at this time that that map correctly represents the bank on the ground, that the bank is between the initial stake and the point U. There is no steep drop-off, is it not low and flat across from the initial stakes of these two claims to this point?

A. No, it is an easy slope. [121]